Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1996

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and and JAMES M. CRAWFORD;

Petitioner,

vs.

ANCHORAGE, A Municipal Corporation,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. Whether Petitioners, the Residents of a Distinct, Identifiable Geographic Area, Were Denied Equal Protection of the Law Because They Were Denied the Right to a Separate Vote, Unadulterated by Votes of the Residents of the Existing Municipal Police Service Area, on Whether to Join the Service Area, a Right Which Had Previously Been Extended to Them and to the Residents of Every Other Geographic Area Which Had Joined the Service Area.

B. Whether the Ordinance and Actions of the Municipality of Anchorage Constituted an Impermissible Gerrymander in Violation of the Constitution Because the Ordinance and Actions, in Determining Who Could Vote on the Issue of Whether to Include this Geographic Area--the Hillside--in the Service Area Had Both the Intent and the Effect of Negating and 'Fencing Out' the Votes of Hillside Residents on this Issue.

C. Whether By Promising the Residents of the Existing Service Area a Financial Boon (a Decrease in Property Taxes), the Municipality of Anchorage Impermissibly "Bribed" those Voters into Voting to Include the Hillside in the Service Area, in Violation of the Constitution.

LIST OF ALL PARTIES TO THE PROCEEDING, PARENT COMPANIES AND NONWHOLLY OWNED SUBSIDIARIES

The caption of the case contains the names of all the parties.

The only Plaintiff-Petitioner which is not an individual, Area G Home and Landowners Organization, Inc. has no parent companies and no nonwholly owned subsidiaries. The Defendant-Respondent, the Municipality of Anchorage, is a municipal corporation and a political subdivision of the State of Alaska.

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The opinion of the Supreme Court of the State of Alaska is reported at 927 P.2d 728 and is reproduced in the Appendix filed herewith ("App.") at 1a.

STATEMENT OF JURISDICTION

On November 22, 1996, the Supreme Court of the State of Alaska issued an opinion affirming the judgment of the Superior Court of the State of Alaska which granted summary judgment to Defendant and dismissed Petitioners' complaint. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

U.S. Constitution, art. I, § 10

U.S. Constitution, amend. XIV, § 1

The Home Rule Charter of the Municipality of Anchorage art. II, Bill of Rights, § 2

Ordinance of the Municipality of Anchorage, AO No. 96-30(S)

The full text of these provisions are set out in the Appendix.

STATEMENT OF THE CASE

This case involves one of the most fundamental of all constitutional rights--the right to vote. This right is "of special importance" because it "acts to preserve 'other basic civil . . . rights.'" Ball v. James, 451 U.S. 355, 375 (1981), quoting Reynolds v. Sims, 377 U.S. 533, 562 (1964). "Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). Restrictions on this fundamental right, moreover, "strike at the heart of representative government." Reynolds v. Sims, 377 U.S. at 555.

In this case, that fundamental right was not merely diluted: There was effective disenfranchisement. A dissident, geographic minority of voters were purposefully disenfranchised through a non-racial, nonpartisan municipal gerrymander which denied them any effective voice on the issue as effectively as if the Municipality had thrown their ballots in the trash. The residents of this geographic area--the Hillside--had repeatedly and successfully resisted being included in Anchorage's Police Service Area ("APSA"). Hillside residents had been given a separate vote on the issue exclusive of non-Hillside municipal residents, precisely the same

procedure which had been used in every previous instance when the Municipality of Anchorage ("Municipality") invited a new area to join the APSA. Four times Hillside voters had declined the Municipality's "invitation" to be added to the APSA. The fifth time, in April, 1996, the Municipality brooked no dissent, by redrawing the boundary lines so as to effectively stuff the ballot box: non-residents of the Hillside were permitted to vote on the issue. Outnumbered by approximately 10 to 1, Hillside voters once again soundly rejected the "invitation," but their votes were effectively ignored, not counted, and in fact were overwhelmed by non-Hillside residents who stood to benefit financially from forcing the Hillside to accept the Municipality's "invitation."

The Municipality's actions and its ordinance redrawing election district boundaries to ensure a "Yes" vote on the issue, has denied Petitioners equal protection of the law. Furthermore, the Municipality's action in redrawing the election boundaries--with both the intent and effect of disenfranchising the voters of a distinct geographic area--constituted an unconstitutional gerrymander. Finally, by promising non-Hillside residents that their taxes would be reduced if they added the Hillside to

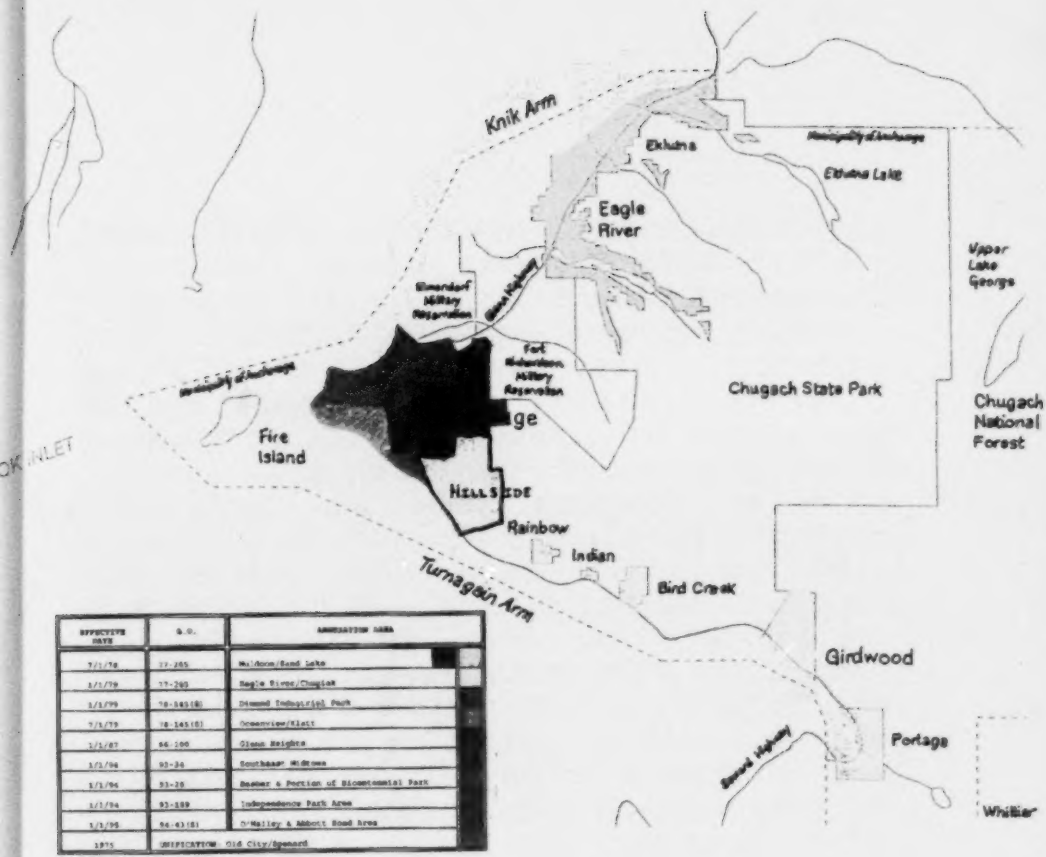
the APSA, the Municipality effectively "bribed" the large majority of voters, in violation of the Constitution.

Area G Home and Landowners Organization, Inc. and other Petitioners ("HALO") therefore respectfully request that the Supreme Court of the United States grant the instant Petition for Writ of Certiorari to review the decision of the Supreme Court of the State of Alaska, which held that these actions and ordinance did not violate the Constitution.

A. Statement of Facts

In 1975, the Municipality, a new home rule municipal government, was created in Anchorage, Alaska, pursuant to adoption of a home rule charter by the electorate. Under the Charter, services, such as police services, were not automatically extended to all parts of the new Municipality. Service areas could only be created, altered, or abolished by a vote of those "within the area affected." Since unification in 1975, the Anchorage Police Service Area ("APSA") has been expanded 10 times.[1/]

[1/]This expansion process is shown in the Illustration on the next page.



EFFECTIVE DATE	A.O.	ANNEXATION AREA
7/1/78	77-265	Mc/Knox/Sand Lake
1/1/79	77-240	Eagle River/Chugiak
1/1/79	78-145(S)	Diamond Industrial Park
7/1/79	78-145(S)	Oceanview/Klatt
1/1/87	86-100	Glenn Heights
1/1/94	93-26	Southeast Wilderness
1/1/94	93-28	Beaver & Portion of Bicentennial Park
1/1/94	93-189	Independence Park Area
1/1/95	94-43(S)	O'Malley & Abbott Road Area
1975	DEFLICATION: Old City/Spenard	

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Added to the APSA were Muldoon/Sand Lake (in 1978), Eagle River/Chugiak (1979), Oceanview/Klatt (1979), Dimond Industrial Park (1979), Glenn Heights (1987), Southeast Midtown (1994), Basher/Independence Park (1994), Bicentennial Park (1994), and Section 16 (1995). On each of these ten prior occasions, an election was held to determine if the area would be added to the APSA. In each election, only residents of the area "invited" to join the APSA could vote on the issue. Residents of the existing APSA could not--and did not--vote. At no time in its history (before April, 1996) had the Municipality ever expanded a service area without a separate, independent vote of the residents within the new area to be served.

The Hillside is a historically identified cohesive geographic area within the boundaries of the Municipality. The Hillside borders on the Chugach Mountains and Chugach State Park to the east, the New Seward Highway on the west, O'Malley Road on the North and McHugh Creek on the south. The area, although primarily residential in nature, is not densely populated. Since unification, residents of the Hillside had been "invited" to join the APSA on four occasions--1977, 1986, 1988 and 1993. On each occasion, like the

residents of Eagle River, the Muldoon Area, etc., Hillside residents had been given the right to vote--separately and independently--on the issue. In each election, no residents of the existing APSA were allowed to vote. In each election, Hillside voters voted against joining the APSA, with an overwhelming margin in the last three elections.

By December, 1995, the Hillside's repeated rejection of police services became intolerable to municipal officials. In January, 1996, the municipal Assembly held a work session to discuss this problem and to consider "creative" ways to hold yet another election, with one difference: this time the election would be structured in such a way as force the Hillside to become part of the APSA regardless of the opposition of its residents. The municipal attorney proposed a clever solution: Let residents of the existing APSA abolish the APSA contingent on passage of a separate ballot proposition creating a New "Improved" APSA, which would include both the existing APSA and the Hillside. The separate proposition creating the New APSA would be voted on by those residing in both the old and new areas voting as a single unit. Since there were 140,585 registered voters in the existing APSA and only 14,230 on the Hillside, a ratio of 10 to 1, and since

APSA residents had been promised a reduction in property taxes[2/], a favorable vote was assured. The second ballot proposition also provided that once Hillside residents were included in the new APSA, they would be liable for all general obligation bonded indebtedness which had been incurred previously by the old APSA.

Thus, even if every registered Hillside voter appeared at the polls and voted against inclusion in the new APSA, the measure would undoubtedly (and in fact did) pass due to the overwhelmingly greater number of voters within the existing APSA who had a direct, financial interest in supporting the measure. To borrow a term from Carrington v. Rash, 380 U.S. 89, 94 (1965), Hillside voters who had voted the "wrong" way four times previously would now be effectively "fenced out" of the electoral process through nothing more than an electoral

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[2/]Residents of the existing PSA were promised an annual reduction in real property taxes, if the Hillside were forced into the APSA, of approximately $40 on a typical $180,000 house. HALO v. Anchorage, 927 P.2d 728, 738 n.9 (Alaska 1996).

"charade."[3/] Municipal officials have openly admitted that the 1996 ballot propositions were purposefully drafted to deny Hillside residents a right of separate vote because in the four prior elections where that right had been extended, Hillside residents kept voting the "wrong" way--i.e., against joining the APSA. In the words of its own lawyer, in fact, the Municipality "does not dispute the fact that it is taking the present step because the Hillside previously voted not to join the [APSA]." App. at 92a.

In the April 1996 election, voters of the existing APSA--not surprisingly--voted to abolish it and to create a new APSA which included the Hillside. Although the Hillside voted by nearly 4 to 1 against being included in the APSA, the record demonstrates that it would have made no difference if 100% of the voters went to polls and voted "No" or 100% simply stayed home. They were overwhelmed by the 10:1 majority in the old APSA. The Municipality had purposefully achieved its intent--to

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[3/]The description aptly given the Municipality's ballot scheme by the Chief Justice of the Alaska Supreme Court, HALO v. Anchorage, 927 P.2d at 743 (Compton, C.J., dissenting).

compel the Hillside to join the APSA. Hillside voters might just as well have stayed home--their votes were not merely diluted, they were rendered meaningless.

Although only a single election was held, it has effectively denied Hillside residents the right to vote on this issue forevermore. Detachment from the APSA is virtually impossible, both practically and legally. Not only would Hillside voters continue to be greatly outnumbered in any subsequent vote on the issue, but a successful effort to detach from the APSA may well impair the security of municipal bondholders, thereby violating the Contract Clause of the U.S. Constitution. See infra.

B. Proceedings Below

In March, 1996, HALO filed an action in state court to enjoin the Municipality from placing the two propositions on the ballot and to have the municipal ordinance creating them declared unlawful and unconstitutional, under both state and federal law. HALO first raised the federal issues in its complaint: Count II of the complaint alleged that the Municipality's actions and the municipal ordinance constituted an unconstitutional gerrymander and denied HALO equal protection of the law, under both the state and federal constitutions. See

App. at 107a - 108a. HALO again raised the federal issues in both in its Motion for Preliminary Injunction and in its Motion for Summary Judgment. See App. at 88a, 94a. The trial court summarily denied HALO's request for relief and dismissed HALO's complaint. See App. at 84a.

HALO appealed the trial court's decision to the Supreme Court of the State of Alaska. HALO raised the federal constitutional issues in its Opening Brief to that court. See App. at 74a. On November 22, 1996, the Alaska Supreme Court concluded that "no person's right to equal protection was violated." HALO v. Anchorage, 927 P.2d 728, 738 (Alaska 1996); App. at 32a. HALO now respectfully seeks a Writ of Certiorari to review that decision.

ARGUMENT

If the Hillside voters who participated in the April, 1996 election had lived in any of the ten other geographic areas of Anchorage which were allowed a separate, independent vote concerning whether or not to join the APSA between 1975 and 1995, they, also, would have received an independent right to vote upon that issue, in which residents of the existing APSA could not participate. Indeed, Hillside residents

were allowed a separate vote on four separate occasions between 1975 and 1995. On the last three--in 1986, 1988 and 1993--they rejected joining the APSA by overwhelming margins. In the April, 1996 gerrymander, residents of this defined geographic area--the Hillside--were denied a right which had been granted to all other residents of Anchorage, similarly situated, on the identical issue, since the Municipality was created. The undisputed record in this case demonstrates, moreover, that the Municipality denied Hillside voters this right for one reason, and one reason only: they voted the "wrong" way four times. The Municipality's response, therefore, was to revoke this right, surely an act of invidious geographic discrimination.

Reynolds v. Sims gives geographic status the same significance as race or economic status:

> Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, . . . or economic status . . .

377 U.S. 533, 566 (1964) (citations omitted). This constitutional principle applies to protect a citizen's right to vote not only in federal but in state elections as well. Id. at 554. Furthermore,

> [T]he right of suffrage can be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of his franchise.

377 U.S. at 555 (footnote omitted). The Court recognized that these constitutional protections are imperative to our political system:

> To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote. . . . [T]he basic principle of representative government remains, and must remain, unchanged--the weight of a citizen's vote cannot be made to depend on where he lives.

Id., 377 U.S. at 567.

Justice Stevens echoed these observations when he cast the deciding vote in Karcher v. Daggett, 462 U.S. 725 (1983). Justice Stevens wrote that gerrymandering violates the Equal Protection Clause when

> [It] serve[s] no purpose other than to favor one segment--whether racial, ethnic, religious, economic, or political--that may occupy a position of strength at a particular point in time, or to disadvantage a politically weak segment of the community. . . .

462 U.S. at 748 (Stevens, J., concurring). Justice Stevens wrote that the protection of the Equal Protection Clause against vote dilution "cannot be confined to racial groups":

> As long as it proscribes gerrymandering against such groups, its proscription must provide comparable protection for other cognizable groups of voters as well. . . : 'In the line-drawing process, racial, religious, ethnic and economic gerrymanders are all species of political gerrymanders.

Id. at 749 (Stevens, J. concurring) (citation omitted.

In November, 1996, the Alaska Supreme Court concluded that the Anchorage Municipal Charter did not give voters residing in the geographic area to be added to a service area an independent right to vote separately upon that issue. Nevertheless, Hillside voters had a federally protected right to a separate vote, independent of any rights they had under the municipal charter. The Municipality had extended the right to a separate vote to voters in every other geographic area--10 in all--which had previously been "invited" to join the APSA. Indeed, Hillside voters had been given this same right to a separate vote on four prior occasions. That right, once given, cannot be withdrawn arbitrarily:

> [O]nce citizens are granted the right to vote on a matter, the exercise of that vote becomes protected by the Constitution even though the state was not obligated to allow any vote at all.

Hussey v. City of Portland, 64 F.3d 1260, 1263 (9th Cir. 1995), cert. denied, -- U.S. --, 116 S.Ct. 911 (1996). See also Hayward v. Clay, 573 F.2d 187, 190 (4th

Cir. 1978). Moreover, neither a state nor its subdivisions may deny to any person "equal protection of the laws." U.S. Const., amend. XIV, § 1.

This appears to be a case of first impression. It involves a non-racial, non-partisan municipal gerrymander. This writer has found no reported similar case which has been considered by this Court since its decision in Davis v. Bandemer, 478 U.S. 109 (1986). Although of first impression, however, previous decisions of this Court offer substantial guidance on the matter at hand.

Suppose that the Municipality, desirous of exacting $4.4 million annually in APSA taxes from a distinct geographic area, gave the voters of that area four chances to vote on whether to join the APSA. Suppose that those voters, exercising their right to vote separately, exclusive of votes of residents in the existing APSA, overwhelmingly rejected the "invitation" each time. What would the Municipality's options be if it wanted to overcome these unruly, "politically incorrect" voters?

Suppose, hypothetically, that the Municipality could control voter registration. Suppose that the Municipality enacted an ordinance which prohibited all otherwise qualified

persons in the Hillside area from registering to vote on APSA questions. Would this pose a constitutional problem?[4/]

Suppose the Municipality allowed Hillside voters to register, but refused to allow them to cast ballots. Would this pose a constitutional problem?[5/]

Suppose the Municipality allowed Hillside voters to cast ballots but refused to count those ballots. Would this pose a constitutional problem?[6/]

Suppose the Municipality allowed Hillside voters to cast ballots but destroyed or altered those ballots.

[4/]Carrington v. Rash, 380 U.S. 89, 94 (1965) ("'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.")

[5/]Evans v. Cornman, 398 U.S. 419, 422-23 (1970).

[6/]United States v. Mosley, 238 U.S. 383 (1915).

Would this pose a constitutional problem?[7/]

Suppose the Municipality allowed Hillside residents to vote and counted their ballots, but also stuffed the ballot box with "Yes" ballots of sufficient number to overcome the unacceptable "No" ballots from Hillside voters. Would this pose a constitutional problem?[8/]

Suppose the Municipality, being cost conscious and a good steward of public funds, eliminated the expenses associated with stuffing the ballot box and simply redrew election district boundaries so that the unruly, "politically incorrect" Hillside voters who kept voting "No" were outnumbered 10 to 1 by the "Yes" votes of voters who had been promised a tax break if the Hillside were forced to join the APSA. This would achieve the same result, effectively disenfranchising the unruly, uncooperative minority, at less public expense than stuffing the ballot

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[7/]See United States v. Classic, 313 U.S. 299, 315 (1941); see also Reynolds v. Sims, 377 U.S. at 555.

[8/]Ex Parte Siebold, 100 U.S. 371 (1879); United States v. Saylor, 322 U.S. 385 (1944).

box. Does this pose a constitutional problem? That is the question presented here.

Davis v. Bandemer, 478 U.S. 109 (1986) suggests that such a gerrymander would be unconstitutional. The plurality in Bandemer held that a gerrymander is unconstitutional if two facts are proven: (1) "intentional discrimination against an identifiable political group" and (2) "an actual discriminatory effect upon that group." Id. at 127. The test for "discriminatory effect" is whether

> [T]he electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole.

478 U.S. at 132. The "discriminatory effect" must be similar to that imposed upon victims of a racial gerrymander, in that such victims are "essentially shut out of the political process." Id. at 139.

That "discriminatory effect" may be inflicted upon either a majority or upon a minority:

> [A]n equal protection violation may be found only where the

> electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of voters or effective denial to a minority of voters of a fair chance to influence the political process.

478 U.S. at 133 (emphasis added). The "discriminatory effect" must be proven by "more than a showing of possibly transitory results . . ." Id. at 140.

A common understanding of Bandemer, gained by casual reading, is that "discriminatory effect" may not be shown by the results of one election, that this effect must be shown through a number of elections resulting in the dilution or degradation of a group's vote. But that is not what Bandemer says when the plurality's "single election" discussion is read in context.

Bandemer arose out of an alleged Republican gerrymander of the Indiana State Legislature, the General Assembly, in 1981. To prove discriminatory effect

of the gerrymander, the Democratic plaintiffs relied on only the 1982 election for the Indiana legislature. The district court nonetheless held the redistricting statute was unconstitutional, solely on the basis of one election in which "the percentage of Democrats elected was lower than the percentage of total Democratic votes cast." 478 U.S. at 140. There was no evidence, however, on which to base any reasonable projection concerning the long-term effects of the redistricting.[9/]

The Bandemer's Court primary discussion of "one election"[10/] was wholly in the context of the district

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[9/]Because Indiana is a "swing state," sometimes electing Republican majorities and sometimes Democratic, one legislative election was an insufficient basis for any long term projection of "discriminatory effect" upon either political party. 478 U.S. at 135.

[10/]The Bandemer's plurality's other comment concerning "one election" came in the context of its rejecting the district court's ruling that plaintiffs were entitled to "proportional representation": [A] mere lack of proportionate results in one election cannot suffice. . . ." 478 U.S. at 139.

court's findings, based solely on the results of one election, concerning the long-term effects the gerrymander would have on Indiana Democratic State legislators:

> Relying on a single election to prove unconstitutional discrimination is unsatisfactory. . . . The District Court did not find that . . . the Democrats could not in one of the next few elections secure a sufficient vote to take control of the assembly. Indeed the District Court declined to hold that the 1982 election results were the predictable consequences of the 1981 Act and expressly refused to hold that those results were a reliable prediction of future ones.

478 U.S. at 135. Thus, "mere lack of control . . . after a single election does not rise to the requisite level." Id. at 140.

Apparently this discussion has given rise to a common belief that unconstitutional "discriminatory effect" in a non-racial gerrymander case can never be shown by the results of one election. Footnote 17 of Bandemer,

however, sets the record straight and proves the common understanding wrong:

> [W]e believe that Justice Powell incorrectly asserts that more than one election must pass before a successful racial or political gerrymandering claim may be brought . . . Projected election results based on district boundaries and past voting patterns may certainly support this type of claim, even where no election has yet been held under the challenged districting.

278 U.S. at 140 n.17 (citations omitted) (emphasis added).

According to the Bandemer plurality, therefore, "projected" results of the consequences of one election can be sufficient proof of unconstitutional "discriminatory effect" in a non-racial gerrymander case. Just such a projection is not merely possible in the present case, but assured. Hillside voters have essentially been "shut out" of the political process concerning whether they would or would not be included in the APSA. Because of the gerrymander, in which they were--and will continue to be--outnumbered 10 to 1 by residents of the old APSA who have a financial interest in

keeping the Hillside in the New APSA, Hillside voters are, were and will be effectively disenfranchised on this issue. In future elections on this issue, just as in the April, 1996 election, it will make no difference whether every registered Hillside voter stays home or goes to the polls -- their votes will be completely overwhelmed by the far more numerous voters of the old APSA. Thus, the influence of Hillside voters in the political process has been permanently "degraded" by the gerrymander, resulting effectively in total disenfranchisement. It can be safely projected that the gerrymander "will consistently degrade" Hillside voters' "influence on the political process" relating to this issue and that, having been forced into the New APSA, Hillside voters will be never be able to escape from it.

The second ballot proposition, which forced the Hillside into the New APSA, also provided that, upon entry, Hillside residents would be liable for all general obligation bonded indebtedness of the old APSA. While general obligation bonded indebtedness is secured by the full faith and credit of the Municipality, taxes to pay debt service are only levied upon service area residents. Since all property within the New APSA serves as security for the bonds, and since 17% of

assessed residential valuation of the entire Municipality lies in the Hillside, any attempt by the Hillside to escape the New APSA may well be blocked by the Contract Clause of the U.S. Constitution, which provides: "No state shall . . . pass any . . . law impairing the obligation of contracts." U.S. Const. art. I, § 10. Detachment of a significant segment of taxable property from the New APSA may well impair the security of bondholders. See, e.g., Canal Nat'l Bank v. School Administration Dist., 203 A.2d 734 (Maine 1964); Trypack v. Daniels, 874 P.2d 1374 (Wash. 1994); see also Port of Mobile v. Watson, 116 U.S. 289 (1886) and United States Trust Co. v. New Jersey, 431 U.S. 1 (1977).

The predictable, probable irreversibility of the results of the April, 1996 gerrymander, meets Bandemer's test that the political gerrymander is unconstitutional, because its long term effect "will consistently degrade a voter's or group of voters' influence on the political process as a whole." 478 U.S. at 132. In this case, the entire history and process surrounding the inclusion of the Hillside in the New APSA constitutes the "political process as a whole." There has unquestionably been an "effective denial to a minority of voters of a fair chance to influence the political process." Id. at 133. Thus,

Bandemer's test for "discriminatory effect" is satisfied in this instance, even though only one election has occurred.

This is particularly true when residents of the old APSA, who outnumbered Hillside voters 10 to 1, were promised that each household would receive a tax savings of approximately $40 per year if the Hillside were forced to join the New APSA. The only two reported decisions which this writer could find on this subject strongly suggest that a municipality's offering of such a financial incentive is an unconstitutional infringement upon the right to vote. See Hussey v. City of Portland, 64 F.3d 1260, cert. denied, -- U.S. --, 116 S.Ct. 911 (1996) and Town of Fond du Lac v. City of Fond du Lac, 126 N.W.2d (Wis. 1964).

In Hussey, the City of Portland enacted an ordinance providing a substantial sewer connection subsidy to landowners who irrevocably consented to annexation of their property to the City as electors. 64 F.3d 1260. The Ninth Circuit found that the "bribe" was "an unconstitutional infringement on the fundamental right to vote," which subverted "the process through which citizens consent to be governed." Id. at 1266. According to the court, the

inducement could not pass constitutional muster because it was "designed to distort the political process. . . ." Id.

The Fond du Lac court came to the same conclusion. 126 N.W.2d 201. There, the City induced two voters to sign an annexation petition in exchange for a year's free rent and told two others that they would be evicted if they failed to sign. The Wisconsin Supreme Court found that such economic incentives to voters were unconstitutional, an infringement upon the right to vote:

> . . . [T]he use of economic pressure by the defendant-city interested in the outcome of the annexation to obtain favorable signatures of the necessary electors in this case is a shocking disregard of the political process of government. The city's action was the equivalent of buying votes and improper.

Id. at 204. Likewise, here, by offering voters in the old APSA a tax reduction, the Municipality's actions were the equivalent of "buying votes" and thus unconstitutional.

The record in this case is clear and undisputed: the intent of the gerrymander was to deprive "politically incorrect" voters in a distinct geographic area, who kept voting the "wrong" way, of any meaningful voice in determining whether to join the New APSA. The record conclusively demonstrates, moreover, that this intent was perfectly achieved: the effect of the gerrymander was total disenfranchisement of the voters in that area. Accordingly, Bandemer's two-part test to establish an unconstitutional gerrymander is satisfied here.

Let us return to the Questions posed previously. The intent and the effect of the gerrymander produced precisely the same result as if:

The Municipality had prohibited all qualified persons in the Hillside from registering to vote on APSA questions.

The Municipality had allowed Hillside voters to register, but did not allow them to cast ballots.

The Municipality had allowed Hillside voters to cast ballots, but refused to count them.

The Municipality had allowed Hillside voters to cast ballots, but altered or destroyed them.

The Municipality had allowed Hillside residents to vote and counted their ballots, but also stuffed the ballot box so that ballots making the "wrong" choice from Hillside voters were outnumbered by ballots making the "right" choice.

If the Equal Protection Clause of the Constitution would prohibit the Municipality from barring voters from "politically incorrect" geographic areas from registering to vote, would prevent it from forbidding them to vote if registered, would require it to count their ballots, would not allow it to destroy or alter those ballots, and would not allow it to stuff the ballot box, should the Municipality be permitted to circumvent these constitutional prohibitions and to achieve precisely the same result by consciously redrawing boundaries of an electoral district with both the intention and result of disenfranchising the unruly voters, solely because those voters kept voting the "wrong" way?

This question is too important to be left unanswered by this Court.

CONCLUSION

For the reasons stated the Petition for a Writ of Certiorari should be granted.

Respectfully submitted this 20th day of February, 1997.

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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and and JAMES M. CRAWFORD;

Petitioner,

vs.

ANCHORAGE, A Municipal Corporation,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

APPENDICES TO THE PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A - Area G Home and Landowners Organization, Inc. (HALO) v. Anchorage, S-7731, Opinion of the Alaska Supreme Court, affirming the judgment of the Alaska Superior Court, 11/22/96

THE SUPREME COURT OF THE STATE OF ALASKA

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and JAMES M. CRAWFORD,	)
Appellants,	)
v.	)
ANCHORAGE, A Municipal Corporation,	)
Appellee.	)

Supreme Court No. S-7731
Superior Court No. 3AN-96-01661 CI

O P I N I O N

[No. 4435 - November 22, 1996]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Karen L. Hunt, Judge.

Appearances: Richard A. Weinig, Pletcher, Weinig, Moser & Merriner, Anchorage, and Allan E. Tesche, Russell, Tesche & Wagg, Anchorage, for Appellants. Bruce E. Gagnon and Neil T. O'Donnell, Atkinson, Conway & Gagnon, Anchorage, for Appellee. Kenneth G. Robertson, Robertson, Edgren & Christensen, LLC, Anchorage, for Amicus Curiae James Ricks. Claire Steffens, Law Offices of Claire Steffens, Anchorage, for Amicus Curiae O. W. Lowe, Jr. Andrew M. Hemenway, Anchorage, for Amicus Curiae Chugiak-Eagle River Chamber of Commerce. Cynthia Strout, Anchorage, for Amicus Curiae The Girdwood Board of Supervisors.

Before: Compton, Chief Justice, Rabinowitz, Eastaugh and Fabe, Justices. [Matthews, Justice, not participating.]

FABE, Justice.
COMPTON, Chief Justice, dissenting.

I. INTRODUCTION

The Area G Home and Landowners' Organization, Inc. and three taxpayer-citizens (HALO, collectively) appeal the superior court's dismissal of their lawsuit. Their suit sought to prevent the Municipality of Anchorage (Municipality)

from creating a new police service area that would include the area of southeast Anchorage called the Hillside. HALO alleges that in creating the new service area, the Municipality violated its own charter and ordinances as well as the equal protection guarantees in the state and federal constitutions. We affirm the superior court's decision in favor of the Municipality.

II. FACTS AND PROCEEDINGS

The Municipality was incorporated as a unified municipality (EN1) in September 1975, when voters adopted by referendum its constitutional document, the Home Rule Charter for the Municipality of Anchorage (Charter). The Municipality united the previously separate cities in the Greater Anchorage Borough.

The Alaska Constitution and the Charter provide for the creation of "service areas" within the Municipality. Residents of a service area receive specific services, such as fire or police protection, and are taxed accordingly. Alaska Const., art. X, sec. 5; AS 29.35.450; Charter, art. IX, sec. 9.01; North Kenai Peninsula Road Maintenance Serv. Area v. Kenai Peninsula Borough, 850 P.2d 636, 639 (Alaska 1993). Ordinances presently in effect define over thirty-five service areas within the

Municipality to provide for services such as police protection, fire protection, road maintenance, drainage, parks and recreation, and solid waste disposal. Anchorage Municipal Code (AMC) 27.30.010-.610 (1996).

The Charter states twice that a service area may be created or altered only by vote "within the area affected." The section entitled "Service areas" provides:

> (a) A service area may be created, altered, or abolished only with the approval of a majority of those voting on the question within the area affected. . . .
>
> (b) The assembly by ordinance shall adopt procedures for creating, altering, abolishing and operating service areas.

Charter, art. IX, sec. 9.01(a) and (b). In addition, a section designated as a "Bill of Rights," provides:

> This Charter guarantees rights to the people of Anchorage that are in addition to rights guaranteed by the Constitution of the United States of America

> and the Constitution of the State of Alaska. Among rights guaranteed by this Charter are:
>
> . . . .
>
> (2) The right of immunity from the creation or alteration of a service area, except upon a vote within the area affected.

Charter, art. II.

The Anchorage Police Department (APD) serves the Anchorage Police Service Area (APSA), which encompasses a large portion of the Municipality. (EN2) However, APSA does not include the Hillside, an area in southeast Anchorage that is bordered on the west by the New Seward Highway, on the north by O'Malley and Abbott Roads, and on the south by Potter Drive.

The Hillside is a residential area that has grown from a population of approximately 2,500 in 1975 to approximately 25,000 now. It is relatively affluent; according to Mayor Rick Mystrom, its voting population is approximately ten percent of Anchorage's, but its residential property value comprises seventeen percent of the Anchorage total.

Hillside residents do not pay for APD police service. Instead, they rely on Alaska state troopers for protection. However, Hillside residents benefit from APD services. APD provides emergency services and investigates major crimes in the Hillside. APD polices roads that border the Hillside and public institutions, such as Service High School, within the Hillside. About thirty APD officers reside in the Hillside and drive their patrol cars home, providing a limited patrol service for the Hillside. Many citywide services provided by APD benefit Hillside residents. Those services include the 911 system, specialized units such as the bomb squad, and what the Municipality calls "safe city" functions. Safe city functions are programs designed to benefit all Anchorage residents and include crime prevention education, municipal prosecution, jail cells, patrols for safer recreation and shopping areas, and measures to reduce drunk driving.

The boundaries of APSA have not been static. Previous expansions of APSA, to include the neighborhoods of Eagle River-/Chugiak, Muldoon/Sand Lake, Dimond Industrial Park, Ocean View/Klatt, Glenn Heights, South-East Midtown, Basher/part of Bicentennial Park, Abbott/O'Malley, and Independence Park, were approved by the separate votes of residents of the

new areas to be added. Hillside voters have rejected expansion of APSA into their neighborhood on three occasions.

On February 13, 1996, the Anchorage Assembly passed AO 96-30(S). That ordinance placed two propositions on the April 1996 ballot. The first, Proposition 13, provided for the abolition of PSA. Only residents within the existing APSA could vote on it. However, it was contingent on passage of the second proposition, Proposition 14. Proposition 14 provided for the creation, effective January 1, 1997, of a new Anchorage Police Service Area (NAPSA) consisting of the old APSA plus the Hillside. Proposition 14 also stated that "[t]he new police service area would succeed to all of the assets and liabilities, including bonded indebtedness, of the Anchorage Police Service Area." All residents within the boundaries of NAPSA could vote on the second proposition. Thus AO 96-30(S) offered a mechanism to expand APSA to include the Hillside without a separate vote by Hillside residents.

The April 1996 ballot also included Proposition 6, which authorized $900,000 in bonds to purchase APD police cars. That proposition stated that the bonds will be paid by property taxes within APSA and guaranteed by the Municipality. Local law requires service area bonds to

receive "dual majority" approvals from the voters who will be primarily liable for them and the voters who will guarantee them. AMC 06.20.020(A). Therefore, Proposition 6 had to pass both among APSA residents and among all voters in the Municipality. Hillside residents did not vote as APSA residents on Proposition 6. However, if Propositions 6, 13, and 14 all take effect, Hillside residents will be assessed for property taxes on the $900,000 debt after January 1, 1997, under the "assets and liabilities" clause of Proposition 14.

Before the election, HALO brought suit. HALO alleged that AO 96-30(S) violated (1) the "area affected" provisions in the Anchorage Municipal Code and the Charter and (2) the equal protection clauses of the Alaska and United States Constitutions. It sought declaratory and injunctive relief.

The superior court ruled that HALO was not entitled to a preliminary injunction. In particular, the court found that the voting scheme in AO 96-30(S) rested on a correct determination of the areas affected by Propositions 13 and 14:

> Giving the appropriate [deference] to legislative action, a review of the totality of the information before the Assembly

> reveals that the Assembly had a reasonable basis to conclude that all Anchorage voters will be subject to significant change in cost, quality, and quantity of police service if a citywide police service area is created.
>
> The change will affect the tax burden in the old, as well as the new[,] police service area. It will affect the quality of service and its cost throughout the city. It will affect the scope, consistency, and uniformity of delivery of police services citywide to all Anchorage residents. It may affect the quality of police services citywide.

However, the court ordered that the votes of the Hillside be counted separately in case HALO prevailed in a permanent injunction hearing.

In the April 26 election, Proposition 6, the $900,000 levy, passed in APSA by a vote of 19,889 to 17,636, or 53% in favor. It passed area-wide by 22,497 to 21,957, or 50.6% in favor. Proposition 13, to abolish APSA, passed in APSA by a vote of 26,935 to 10,190, or 73% in favor. Proposition 14, to create NAPSA,

passed in the proposed NAPSA (APSA plus the Hillside) by 28,573 to 14,510, or 66% in favor. Hillside residents strongly opposed Proposition 14 by a vote of 5,095 to 1,460, or only 22% in favor.

In July 1996 the court granted summary judgment in favor of the Municipality and issued an order of final judgment. On appeal, HALO makes four arguments. First, HALO claims that the Charter did not give the Anchorage Municipal Assembly (Assembly) the power to expand APSA to include the Hillside without a separate vote of Hillside residents. Second, HALO argues that if the Assembly had the power to expand APSA into the Hillside, the Assembly did not follow correct procedures because it did not make adequate findings of fact. Third, HALO asserts that AO 96-30(S) violates the guarantees of equal protection under the Alaska and United States Constitutions. Finally, HALO also claims that Proposition 6 violates laws requiring residents to accept responsibility by vote for public debt.

III. STANDARD OF REVIEW

Questions of law decided by the superior court on summary judgment are reviewed by this court de novo. Tongass Sport Fishing Ass'n v. State, 866 P.2d 1314, 1317 n.7 (Alaska 1994).

HALO asks us to determine whether the Assembly's actions were consistent with the Municipal Charter. Because the Municipal Charter is a constitutional document, HALO's claims raise constitutional questions of law to which we apply our independent judgment. ARCO Alaska, Inc. v. State, 824 P.2d 708, 710 (Alaska 1992).

HALO also asks us to determine whether the Assembly made adequate factual findings when it adopted AO 96-30(S). We have noted that "[f]actual determinations made by a municipal legislative body with respect to local electoral processes are . . . entitled to deference when reviewed by a court." Kentopp v. Anchorage, 652 P.2d 453, 459 (Alaska 1982). In Kentopp, we suggested that the appropriate standard of review for such questions might be the "reasonable and not arbitrary" test. Id. Here, we determine that test to be the applicable standard of review. (EN3)

IV. DISCUSSION

A. AO 96-30(S) Is in Substance an Alteration of APSA to Include the Hillside.

The Charter permits service areas to be "created, altered, or abolished." Charter, art. IX, sec. 9.01(a). Pursuant

to this language, the Assembly framed AO 96-30(S) so that Proposition 13 would abolish APSA and Proposition 14 would create NAPSA. Nevertheless, we look beyond the form of Propositions 13 and 14 to the substance of the process initiated by AO 96-30(S).

The Municipality designed Propositions 13 and 14 simply to alter APSA to include the Hillside. Indeed, the Municipality concedes that it chose to use two propositions because previous propositions to include the Hillside in APSA, all of which included a separate vote by the Hillside, had failed. Moreover, the Municipality explicitly linked the two propositions by drafting Proposition 13 so that it was contingent on Proposition 14. APSA would not cease to exist unless NAPSA was created simultaneously. Thus, we conclude that AO 96-30(S) initiated what was in substance an alteration of APSA to include the Hillside.

B. The Assembly Had the Power to Expand APSA without a Separate Vote of Hillside Residents.

HALO contends that the Charter prohibits expansion of APSA to the Hillside without a separate vote of Hillside residents. Its argument focuses on the "area affected" provisions in the Charter, and it interprets that phrase to mean the

geographical area that is added to or removed from a service area. To support this interpretation, HALO refers to the Charter's legislative history, prior Assembly interpretations of "area affected," and the language of the Charter's Bill of Rights.

The Municipality counters that "area affected" is not synonymous with the area to be added or removed. Instead, it asserts that "[i]n choosing the term 'area affected' . . . Charter Commission members recognized that more than one area might be 'affected' by creation of a service area or extension of its boundaries." We agree with the Municipality.

1. The Charter's legislative history demonstrates that the Charter Commission intended to define "area affected" broadly.

We have held that when faced with ambiguous language in a legislative act, we may look to the act's legislative history as a guide to construing that language. Dillingham v. CH2M Hill Northwest, 873 P.2d 1271, 1276 (Alaska 1994). We recognize that statements made by legislators during legislative deliberations may be relevant evidence when a court is trying to determine the meaning of ambiguous terms. Madison v. Alaska Dep't of Fish & Game, 696 P.2d 168, 176

(Alaska 1985). Thus, HALO argues that several statements made during hearings conducted by the Charter Commission support its interpretation of the Charter's "area affected" language. We disagree.

A few comments that HALO cites indicate that participants in the hearings believed that some type of vote was needed before a service area could be created or extended. For example, HALO points out that one south Anchorage resident stated that "before a new service area can be created . . . it should be voted on by the people." HALO also indicates that the official pamphlet published by the Charter Commission stated that no service area would be created or extended "unless approved by the voters."

However, the meaning of those statements is ambiguous. They indicate only that individuals believed service areas should be created or extended by vote; they do not suggest what area is entitled to vote. Indeed, one individual's statement, which HALO cites, suggests that hearing participants were not primarily concerned with what area would vote when they raised concerns at the hearings about voting for service area changes. Rather, that individual indicated that the primary concern of persons attending the hearings was that they did not want the Assembly alone to be able to change

service areas because they feared the Assembly would not be responsive to the wishes of the people. (EN4)

HALO also relies heavily upon statements made by one member of the Charter Commission. That member stated that

> [o]ne suggestion she had, which she had not yet discussed with the rest of the Charter Commissioners, would be to provide in the Charter that any area-wide service voted on would also allow the "remote" people to vote on whether or not they wished to be included in the area-wide service.

However, that member's suggestion was not adopted, and the other commissioners did not comment on it. Later in the same meeting, the member stated that

> she would still like to get some feeling from the people as to whether it is important for them that they be allowed to vote on whether they want to be included, before area wide services are spread to the Girdwood/Alyeska area.

Once again, the Commission did not adopt that suggestion. In fact, the record

indicates that only "one person responded affirmatively." Therefore, those comments do not clarify what the Commission intended "area affected" to mean.

Indeed, the best evidence of the meaning the Charter Commission intended for the term "area affected" comes from an analysis of early Charter drafts. An early draft of the service area provisions of the Charter included language incorporating the narrow, geographical definition of "area affected" urged by HALO. On April 15, 1975, the Charter Commission adopted language providing that "[a] service area may only be created, extended or abolished with the approval of a majority of those voters who reside within . . . the area to be created, extended or abolished."

However, the Charter Commission specifically rejected that language on May 3, 1975, when it amended the April 15 provision. The amended provision stated that "[a] service area may be created, extended, or abolished only with the approval of a majority of those voting on the question within the area affected." Except for the substitution of the word "altered" for "extended," that language remained undisturbed throughout subsequent hearings by the Commission.

In interpreting legislative history, courts have concluded that "[t]he rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include the omitted provision." Jimeno v. Mobil Oil Corp., 66 F.3d 1514, 1530 (9th Cir. 1995). In particular, the United States Supreme Court has held that where a legislative body "includes limiting language in an earlier version of [an act] but deletes it prior to enactment, it may be presumed that the limitation was not intended." Russello v. United States, 464 U.S. 16, 23-24 (1983).

Thus, we conclude from the Charter's legislative history that the Charter Commission did not limit the term "area affected" to only the geographic area into which services would be extended. Rather, we conclude that the Charter Commission recognized that areas other than the one into which services would be extended might be affected by a decision to alter a service area.

2. Prior interpretations of the term "area affected" by the Assembly do not establish the meaning of that term.

HALO also argues that prior Assembly interpretations of the Charter's provisions mandate a conclusion that "area affected" means the geographical area to be added to or removed from a service area. HALO correctly points out that the Assembly expanded APSA several times prior to 1995, and each of those actions involved a separate vote by the area to be added. It suggests that we may infer from those actions that the Assembly determined on each occasion that the term "area affected" in the Charter referred to the area to be added to or removed from a service area. For example, the record indicates that when APSA was expanded to include the "Southeast Mid-Town Area," the Assembly permitted only residents of the Southeast Mid-Town Area to vote. Although the Assembly made no express conclusions about the "area affected" by that expansion, HALO appears to argue that the Assembly's actions should bar it from defining "area affected" more broadly in the current Hillside case. This argument amounts to an assertion that prior Assembly actions, such as the one involving the Southeast Mid-Town Area, were accompanied by implied constructions of "area affected" by the Assembly that should impact our decision about the meaning of that term.

Many courts have concluded that a legislature's construction of ambiguous

constitutional provisions may be probative of the constitution's meaning. See, e.g., Davis v. City of Berkeley, 794 P.2d 897, 906 (Cal. 1990) (stating that a legislature's interpretation is entitled to deference). However, courts recognize that the judicial branch remains the final arbiter of what a constitutional provision means. E.g., Utah County v. Intermountain Health Care, Inc., 709 P.2d 265, 268 (Utah 1985).

We agree with HALO that prior, consistent interpretations by the Assembly of "area affected" may be probative of that term's meaning. Reference to the Assembly's interpretation of "area affected" is particularly appropriate in this case because the Charter delegates to the Assembly the power "to establish procedures for creating, altering, or abolishing service areas." Charter art. IX, sec. 9.01(b). And the parties do not dispute that this delegation includes the power to define "area affected" for the purposes of determining who is entitled to vote on a particular change to a service area.

However, we disagree with HALO that Assembly actions made in conjunction with past changes to APSA provide a complete picture of the Assembly's prior construction of "area affected." Our review of the record reveals a critical determi-

nation by the Assembly that clarifies how the Assembly construed that term. In 1979, the Assembly enacted AMC 27.10.010(A), which defines "area affected." The Assembly was prompted to enact that ordinance when it noted the ambiguity of the "area affected" language in the Charter. A January 9, 1979 Assembly Memorandum, AIM 4-79, signed by Municipal Attorney Theodore Berns and Mayor George Sullivan, concluded that "the term 'area affected' . . . does not have any independent legal definition, but is instead subject to reasonable definition by the Assembly in the form of a legislative finding."

A second memorandum dated March 12, 1979 and signed by Municipal Attorney Berns and Assistant Municipal Attorney Thomas Klinkner again noted potential ambiguity in the "area affected" language of the Charter. That memorandum concluded that the meaning of "area affected" was potentially ambiguous in the case of an alteration of a service area. It noted two possible meanings for the term:

> 1. The area affected is the area that will gain or lose a service as a result of the . . . alteration . . . of the service area.

> 2. The area affected is the area described under (1) above, plus any other area whose tax rate will be changed substantially by the . . . alteration . . . of a service area.

The memo concluded that

> to resolve all doubts as to the meaning of the term "area affected[,"] further legislation would be necessary. An amendment to Title 27 [of the Municipal Code], adopting one or the other of the two interpretations proposed above, would be most helpful to foreclose future disputes as to the meaning of the term.

Shortly thereafter, ordinance AO 79-156 was adopted, apparently as a response to the concerns raised in the two Assembly memoranda. That ordinance, now codified at AMC 27.10.010(A) defined "area affected" as "that area determined by the Assembly to be subject to significant change in the cost, quality, quantity, or other factor affecting the delivery of service therein if the proposed action is approved." AO 79-156. Because this ordinance adopts language referring to a "significant change in cost," it appears that the Assembly en-

dorsed the second, more expansive, definition of "area affected" proposed in the March 1979 memo, which included not only the area where services change but also the area where taxes change significantly.

In light of our decision that a legislative determination of an ambiguous constitutional term may be relevant evidence of a constitution's meaning, we conclude that the Assembly's choice of the broader definition of "area affected" provides additional support for our conclusion that the Charter's legislative history demonstrates an expansive meaning of that term.

3. The Charter's Bill of Rights does not clarify the definition of "area affected."

Finally, HALO asserts that the Charter's "Bill of Rights" supports its interpretation of "area affected." The Bill of Rights provides that "[a]mong the rights guaranteed by this charter are . . . [t]he right of immunity from the creation or alteration of a service area, except upon a vote within the area affected." Charter, art. II.

However, the Official Commentary to the Charter undermines HALO's reliance on this provision. It expressly states that

the Bill of Rights is "intended as a synopsis of substantive rights granted in the remainder of the Charter. It is not intended to expand or modify the rights in question as they are stated in other parts of the Charter." Moreover, the Bill of Rights provides no guidance about whether "area affected" has a narrow meaning, as urged by HALO, or a broader one.

Thus, despite HALO's arguments relating to the Charter's legislative history, the Assembly's prior interpretations of "area affected," and the language of the Charter's Bill of Rights, we conclude that the meaning of "area affected" is broader than the geographical area to be added to or removed from a service area. (EN5) Therefore, we conclude that the Assembly had the power to determine that all persons living in APSA and the Hillside were within the area affected by AO 96-30(S), even though that determination would mean that residents of the Hillside would not be permitted to approve NAPSA by a separate vote.

C. The Assembly Made an Adequate Factual Finding that the Residents of NAPSA Were within the Area Affected by AO 96-30(S).

The next issue before us is whether the Assembly followed correct procedures

in adopting AO 96-30(S). As indicated previously, AMC 27.10.010(A) defines the procedures the Assembly must follow to create, alter, or abolish a service area. That ordinance states that the "area affected" by an alteration of a service area is "that area determined by the assembly to be subject to significant change in the cost, quality, quantity or other factor affecting the delivery of service therein if the proposed action is approved." AMC 27.10.010(A). Thus, both parties agree that in order to determine what areas would have the right to vote on the alteration of APSA, the Assembly first had to determine what areas would be subject to a "significant change" in some "factor affecting the delivery of service" in that area. Only then could the Assembly determine that the residents of that area would be entitled to vote.

The Municipality contends that we may infer that the Assembly reasonably concluded that APSA was within the area affected by AO 96-30(S). It asserts that "[t]he refusal of the Hillside voters to join [APSA] was of such significance that it had come to be known as the 'Hillside police problem.'" To demonstrate that the Assembly determined that APSA was within the area affected, the Municipality argues that AO 96-30(S) "was simply the culmination of a series of proposals considered by the Assembly beginning

in December 1995 that dealt with the Hillside police problem." It concedes that the final ordinance in that series of proposals, AO 96-30(S), did not contain express legislative findings. (EN6) However, the Municipality maintains that its findings relating to AO 96-30(S) may be inferred from the findings accompanying prior proposals in the series aimed at resolving the Hillside police problem.

HALO, on the other hand, argues that we may not look to prior, unenacted ordinances to infer that the Municipality made required findings. Rather, it maintains that the Assembly never determined that APSA was within the area affected by AO 96-30(S). To support its argument, HALO cites three sources. The first, a treatise, concludes that "statements made by persons in favor of a rejected or failed bill are meaningless and cannot be used as an extrinsic aid." 2A Norman J. Singer, Sutherland Statutory Construction sec. 48.01, at 302 (5th ed. 1992). The second source states that the legislative history of one act cannot be transferred to a second, similar act. Westlands Water Dist. v. Natural Resources Defense Council, 43 F.3d 457, 462 (9th Cir. 1994). Finally, the third source cited by HALO provides that "[t]he light shed by . . . unadopted proposals is too dim to pierce statutory obscurities." Sacra-

mento Newspaper Guild v. Sacramento Bd. of Supervisors, 69 Cal. Rptr. 480, 492 (Cal. App. 1968).

The authorities HALO cites are inapposite. In all three of the sources cited by HALO, the issue was whether legislative history of one statute is probative of the meaning of language in another statute. 2A Sutherland Statutory Construction sec. 48.01, at 301-02 (5th ed. 1992); Westlands Water Dist. v. Natural Resources Defense Council, 43 F.3d 457, 462 (9th Cir. 1994) (finding that although the Central Valley Project Reform Act (CVPRA) was the predecessor of the Central Valley Project Improvement Act (CVPIA), legislative history of the CVPRA was not helpful in determining whether the CVPIA was exempted from the National Environmental Policy Act); Sacramento Newspaper Guild v. Sacramento Bd. of Supervisors, 69 Cal. Rptr. 480, 492 (Cal. App. 1968). That is not the issue in this case. We are asked to review legislative history to determine whether the Assembly made a required factual determination.

We conclude that it is appropriate to examine the entire legislative history of AO 96-30(S), including portions of the record relating to the proposals considered by the Assembly between December 1995 and February 1996. The legislative

history relating to proposals other than AO 96-30(S) are relevant because all of the proposals, including AO 96-30(S), were different options relating to a single initiative to address the Hillside police issue. After reviewing the record relating to the various proposals considered by the Assembly, we are persuaded that the Assembly recognized that APSA was within the area subject to a "significant change in cost, quality, quantity or other factor affecting the delivery of service" if Propositions 13 and 14 passed.

The record indicates that the Assembly wanted to correct what it viewed as an inequitable tax burden falling on residents of APSA. In conjunction with the December 12, 1995 proposal, the first in the series designed to address the Hillside police issue, the Assembly specifically noted that Hillside residents substantially benefitted from the safe city functions (EN7) provided in APSA without having to pay for them.

An Assembly Memorandum written by the Mayor's office to accompany the December proposal clarified the problem that the Assembly was to address. That memorandum noted that "[t]he exclusion of the Hillside [from APSA] has continued to cause division between the Hillside and the rest of the Municipality since the

burden of funding public safety falls inequitably on the . . . people who do not live on the Hillside." The memorandum explained that "[p]olice protection services are comprised of two major elements: police neighborhood patrol and 'safe city' functions. . . . Although the Hillside area does not receive police neighborhood patrol from the Anchorage Police Department, Hillside residents nonetheless receive the benefits of police protection services when traveling, shopping, working and availing themselves of the cultural and recreational facilities in [APSA]." The memorandum concluded that "[a] redistribution of the cost of police protection services is not only fair and equitable but provides a just and sound method of payment for public safety."

The Assembly also received a memorandum prepared by the Budget Director on January 23, 1996 that discussed the December proposal. That memorandum highlighted the Hillside police problem and outlined the effects of taxing Hillside residents for police services. It noted that Hillside residents benefitted from safe city functions funded by residents of APSA. It stated that "[s]ince Hillside residents are not paying for the police protection benefits that they receive, the taxpayers living within [APSA] are paying higher property taxes

than they should." In conclusion, the memorandum recommended that the Assembly adopt an ordinance that would "provide a mechanism for Hillside residents to pay their share of the Safe City function costs."

The January 23 memorandum was accompanied by a "Summary of Economic Effects" of the December proposal. The summary reiterated the perceived inequitable benefit received by residents of the Hillside as roughly equal to six percent of APSA's budget from property taxes. The summary also estimated that if Hillside residents were taxed according to the benefit they receive from the APD's safe city functions, the tax rate for residents of APSA would fall. Finally, the summary noted that the total cost for police service would not vary; the only change would be that $2.2 million of the cost of safe city functions would be shifted to Hillside residents.

A second Assembly proposal, which was discussed on January 2, 1996, reiterated the Assembly's conclusion that it needed to resolve the Hillside police issue "to more fairly distribute the burden of payment for safe city functions of police protection services."

We infer from these documents that when the Assembly adopted AO 96-30(S), it

had concluded that APSA would be subject to "significant change" in the cost of delivering service to it. Like all of the other proposals considered by the Assembly, AO 96-30(S) shifted to Hillside residents a proportionate share of the cost of APD's safe city functions. As a result, the Assembly's prior determinations relating to APD's safe city functions were relevant to AO 96-30(S). In prior documents, the Assembly had already determined that the failure to tax Hillside residents proportionately for the APD's safe city functions negatively impacted residents of APSA. It had also already determined that charging the Hillside for its share of the safe city functions would reduce the cost of providing police service to APSA residents. Indeed, it was aware that, although the total cost for providing service to APSA and the Hillside would not change, the cost of serving APSA would drop by approximately $2.2 million. (EN8)

We note that AMC 27.10.010(A) states that an area is "affected" if the Assembly determines that the cost of delivering service to that area would change significantly. The focus of that ordinance is whether there would be a significant change in the cost of delivering services to an area, which in this case was APSA. As indicated above, the Assembly was aware that that cost would

drop by approximately $2.2 million. This represents a "significant" change that is nearly five percent of the total APD budget. Therefore, HALO's argument is misdirected when it suggests that the focus of our inquiry might be whether the per family savings to APSA residents (EN9) was significant.

D. The Assembly Did Not Violate Equal Protection by Enacting AO 96-30(S).

HALO argues that AO 96-30(S) violates the equal protection clauses of the Alaska and the United States Constitutions. HALO asserts that the ordinance violated equal protection by (1) denying Hillside voters' right to vote free from invidious discrimination and (2) by denying their right to free and effective representation through an unconstitutional gerrymander. We disagree.

HALO's equal protection claims depend upon the assumption that the Hillside area has a right under the Charter to a separate vote because it is the only area affected by AO 96- 30(S). Because we have concluded that APSA was within the area affected, the Assembly correctly permitted APSA residents to vote. Thus, every voter within the area affected by AO 96-30(S) was given an equally powerful

vote, and no person's right to equal protection was violated.

E. Proposition 6 Was Not Illegal.

HALO's final argument is that Hillside residents cannot be forced to take responsibility for $900,000 in bonds that they did not accept by vote. As noted earlier, voters approved Proposition 6, which authorized up to $900,000 in general obligation bonds. Pursuant to the "dual majority" vote requirement of AMC 6.20.020(A), (EN10) Proposition 6 was submitted to all voters within APSA, as well as to all voters in the Municipality for a pledge of the Municipality's full faith and credit. Hillside voters participated in the area-wide vote.

HALO claims that Proposition 6 violated AMC 6.20.020(A) on the theory that Hillside residents should have been allowed to vote along with other APSA residents because Hillside residents would ultimately share responsibility for repayment of the bonds if APSA were altered to include the Hillside. HALO also claims that Proposition 6 violated article IX, section 9 of the Alaska Constitution because Hillside residents were "qualified to vote" but were not allowed to vote with APSA residents.

We disagree. The dual majority requirement in AMC 6.20.020(A) assures residents of service areas that they will not be made responsible for additional service area debt without their separate consent. Hillside residents' participation in only the area-wide vote was consistent with the ordinance. On the date of the vote, Hillside residents were not residents of the service area. Indeed, they could not become residents of the service area until January 1, 1997, when the service area provision would take effect if approved. Therefore, Hillside residents were not entitled to vote with the residents of APSA.

Finally, HALO claims that Proposition 6 was misleading because Hillside residents were not told on the ballot containing Proposition 6 that they would be liable for repaying the bonds if the service area propositions passed. We disagree. The plain language of Proposition 6 states that residents of APSA would be primarily responsible for the bonds. Similarly, Proposition 14 clearly and succinctly states that "[t]he new police service area would succeed to all of the assets and liabilities, including bonded indebtedness, of [APSA]." We conclude that the propositions were not misleading. It was clear that the new bonds, if approved, would become part of the debts assumed by residents of NAPSA.

V. CONCLUSION

We AFFIRM the superior court's decision. The Assembly had the power to expand APSA to include the Hillside without a separate vote by Hillside residents. In addition, the Assembly properly exercised its power when it enacted AO 96-30(S). There is sufficient evidence that the Assembly determined that the area affected by AO 96-30(S) included both the Hillside and APSA. Finally, the Assembly did not violate equal protection by enacting AO 96- 30(S), and it did not act illegally by not permitting Hillside

residents to vote with APSA residents on the ballot issue concerning bonded indebtedness for the service area.

COMPTON, Chief Justice, dissenting.

I. INTRODUCTION

Voters residing within a substantial part of the Anchorage "Hillside" area repeatedly rejected inclusion in the Anchorage Police Service Area (APSA). Before the present controversy arose, they voted down three separate ballot propositions that would have led to their inclusion. At the urging of the Mayor, the Anchorage Municipal Assembly (Assembly), by a five to four vote, adopted AO 96-30(S), which provided the fourth opportunity for Hillside area voters to determine whether they wanted to be included in a police service area. Aware that Hillside voters overwhelmingly opposed inclusion in APSA, AO 96-30(S) also allowed voters in APSA to vote on the inclusion of the Hillside area. Despite the fact that Hillside area voters once again rejected the annexation (5,095:1,460), the measure passed on the wave of 28,573 votes from voters residing in APSA.

Before passing AO 96-30(S), the Assembly considered four "solutions" to the "Hillside problem." From considera-

tion of the various proposals before the Assembly, several things became clear. The Municipality of Anchorage (MOA) delineates two kinds of police service: (1) police neighborhood patrols, and (2) "safe city" functions. The Mayor conceded to the Assembly that the Hillside area "does not receive police neighborhood patrol from the Anchorage Police Department," but noted that residents of that area "nonetheless receive the benefits of police protection services when traveling, shopping, working, and availing themselves of the cultural and recreational facilities in the Anchorage Police Service Area." (EN1) Since "most of the thoroughfares, businesses, places of employment, shopping areas and the majority of schools, cultural and recreational areas are within the police service area, the Hillside benefits from safe city functions."

Anchorage Budget Director Eugene Dusek identified APSA functions similarly. "When Anchorage taxpayers in the Police Service Area pay their taxes for police protection, the mill rate consists of two major components: First Response Functions (neighborhood patrol) [and] Safe City Functions." He defined safe city functions as those which

> protect the quality of life and ensure that all Municipal citi-

> zens receive the benefits of police protection when traveling, shopping, working and availing themselves of the cultural and recreational facilities in Anchorage.

According to Dusek it is the cost of only safe city functions that will be allocated to taxpayers in the area annexed. (EN2) "[M]ost" and a "majority" of those functions take place within the Anchorage Police Service Area, not the area annexed.

During discussions of the various proposals before the Assembly, it was clear that some members of the Assembly and the Mayor were searching for a way to force Hillside residents to pay for what was deemed their fair share of providing safe city functions. These functions are benefits to those who live outside the city and come into the city to work, shop and recreate. There was no discussion of extending any patrol into the Hillside area, or changing the current level of service provided.

The stated purpose of AO 96-30(S) was to equalize the tax burden for providing safe city functions. Mr. Dusek told the Assembly, "[i]t provides a more equitable means for all Anchorage resi-

dents to share in the costs of protecting the quality of life . . ."

This is the general framework in which we must address the issues before this court. This case is not about whether the residents of the Hillside area of Anchorage benefit from police services provided in the Anchorage Police Service Area. They do. Rather, it is about whether procedures followed by the Assembly to recover a portion of the costs of APSA from Hillside residents were in conformity with the Anchorage Municipal Charter (Charter), the Anchorage Municipal Code (Code) and decisional law of this court.

This case raises two questions which I believe the court has decided wrongly. First, "area affected" has been redefined, in violation of the Charter. The court arrives at a new definition by relying on legislative history that is only arguably ambiguous, and by rejecting seventeen years of Assembly interpretation of the Charter provision. Second, the court, applying this new definition of "area affected," concludes that the Assembly inferred a legislative finding that there was a "significant change" in APSA as well as the area annexed to APSA by AO 96- 30(S). No such determination was ever made by the Assembly. This conclusion undermines cases decided by

this court which require that legislative findings be articulated in decisional documents.

II. INTERPRETATION OF "AREA AFFECTED"

The term "area affected" appears in the Charter and in the Anchorage Municipal Code. It has been interpreted consistently by the Assembly since the Charter was passed. The Charter, the Code and the Assembly's past interpretation all support the conclusion that Hillside voters alone must be allowed to determine whether they will be annexed to APSA.

A. Use of "Area Affected" in the Charter

Article IX, sec. 9.01(a) of the Charter provides that "[a] service area may be created, altered, or abolished only with the approval of a majority of those voting on the question within the area affected. . . ." A plain reading of this language suggests that those who reside in the area to be "created, altered, or abolished" should approve the change. "[W]ithin the area affected" is defined by the service area that is to be "created, altered or abolished." In the case of alteration of a service area, those to be added or deleted should be the ones to vote.

Article IX, sec. 9.01 provides that if there are no qualified voters within a service area to be "created, altered, or abolished," it can be changed only "with the written consent of the owners of all real property within the area affected." This provision supports the conclusion that those making the decision on a service area alteration are the residents of an area to be altered. If voters in an existing area could vote to alter service in an area where there are no resident voters, this provision would be unnecessary.

Article II, sec. 2 of the Charter, entitled "Bill of Rights," provides that the people of Anchorage are entitled to immunity from service area alterations, unless the people voting within the "area affected" approve such a change:

> This Charter guarantees rights to the people of Anchorage that are in addition to rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Alaska. Among rights guaranteed by this Charter are:
>
> . . .

> (2) The right of immunity from the creation or alteration of a service area, except upon a vote within the area affected.

The court downplays the importance of this language, because the Official Commentary to the Charter explains that the Bill of Rights is "intended as a synopsis of substantive rights granted in the remainder of the Charter. It is not intended to expand or modify the rights in question as they are stated in other parts of the Charter."

The language from the commentary indicates the bill of rights and other provisions of the Charter must be read consistently. While this section does not expand rights, the language reinforces the notion that the "area affected" is the area to be newly taxed. The right to immunity from creation or alteration of a service area is meaningless if "area affected" can be read as including an area whose tax burden may decrease by the creation or alteration of the new service area. Such a broad interpretation translates this guarantee into a nullity: an area may be protected from involuntary inclusion in a service area, unless it saves somebody else money.

The court places substantial weight on a Charter provision amended in 1975. Slip Op. at 12-13. It then relies on case law which holds that a statute should not be construed to include an omitted provision. But the language of the 1975 Charter provision that changed does not foreclose the interpretation of "area affected" followed by the Assembly for the past seventeen years. The original Charter language did not include the words "area affected." The amended language substituted the phrase "the area to be created, extended or abolished," a phrase that already appears earlier in the same sentence, with the words "the area affected." No legislative history is cited to explain this change. The change alone is not enough to support the conclusion that the Charter Commissioners intended to delete "limiting" language. If the intent of the Charter Commission had been as clear as the court suggests, there would have been no need for the 1979 codification by the Assembly of the term "area affected."

The court dismisses legislative history which indicates voters and Charter Commissioners were concerned about the imposition of service areas on neighborhoods which did not want service. The court does so in part because voters were clearly concerned with leaving service area decisions in the hands of the As-

sembly. However, concern that the decision not be left to the Assembly does not preclude a conclusion that the provision was drafted also to protect areas to be annexed or newly served from the tyranny of a majority of voters in more populated areas.

The Charter's history indicates its service area provisions were intended to empower small communities within the Municipality, to allow them self-determination, and to avoid their domination by a centralized governing body. Attempts at unification were twice defeated before the successful 1975 Charter adoption. The reason for the defeat of the 1970 and 1974 charters was the "overwhelming outside city vote from those in rural areas who disliked government and did not want to pay taxes for services." Paul H. Wangness, A History of the Unification of the City of Anchorage and the Greater Anchorage Area Borough, 1977.

In both of the defeated charters, voters within the city approved the unification charter, but voters outside the city disapproved by a 2:1 margin. The third proposed charter won the support of outlying areas and passed. "It is doubtful that the Charter could have been approved without a service area provision." Id.

Charter Commissioners also made representations to citizens in outlying areas that voting minorities in small communities would be protected by the Charter. For example, during a public meeting in Girdwood Commissioner Arliss Sturgulewski pointed specifically to the service area provisions to illustrate parts of the Charter designed to protect minority blocks of rural voters. At the same hearing Commissioner Mary Frohne stated she believed the Charter provided more protection for the people regarding services than under the practice previously followed by the Borough. Under that previous practice, the Borough required a separate vote of the residents of the area not previously receiving service.

The plain language of Charter Article II, sec. 2, and Article IX, sec. 9.01(a), demonstrates that these provisions were intended to prevent creation or alteration of a service area, with the attendant taxation of real property on voters within the less populated area, by those within the more populated area. To permit the court's result is counterintuitive; voters within an existing taxed area surely always will vote to tax property within an area annexed if the additional revenue is for the provision of services within the existing taxed area. I am unpersuaded that the language of the

Charter could contemplate such a result. The Assembly's attempt to codify "area affected" and its historic practice reinforce this conclusion.

B. Codification of "Area Affected"

In 1979 the Assembly codified a definition of "area affected":

> [T]he term "area affected" shall mean that area determined by the assembly to be subject to significant change in the cost, quality, quantity or other factor affecting the delivery of service therein if the proposed action is approved.

Anchorage Municipal Code 27.10.010(A). The court examines the legislative history of AMC 27.10.010(A) and concludes that it supports MOA's interpretation of "area affected." This determination is based on two 1979 memoranda signed by Municipal Attorney Theodore Berns which noted the potential ambiguity in the "area affected" language.

The 1979 memoranda conclude that the meaning of "area affected" in the context of alteration of a service area is ambiguous, embracing two possible meanings:

1. The area affected is the area that will gain or lose a service as a result of the . . . alteration . . . of the service area.

2. The area affected is the area described under (1) above, plus any other area whose tax rate will be changed substantially by the . . . alteration . . . of a service area.

Slip Op. at 16. The code provision as passed did not embrace explicitly either definition appearing in the 1979 memoranda. Nonetheless the court concludes that the Assembly must have meant the second of the two proposed definitions.

The legislative histories of the Charter and AMC 27.10.010(A) arguably are ambiguous. While they may point to an attempt to accommodate a variety of interests and concerns, the Charter was clearly meant to incorporate protection for less populated areas when service area decisions are made. It could not have passed otherwise. To conclude, as the court has, that the Charter Commission was paving the way for forced annexations, gives legitimacy to the claims of HALO that the government is now backing out of promises made to rural areas in 1975.

C. Past Interpretation of "Area Affected"

The history of the Assembly's own interpretation of "area affected" does not support the court's conclusion. Indeed, it supports the contrary conclusion.

Excluding AO 96-30(S), there have been thirteen separate votes on police service area extensions since passage of the Charter. Ten extensions were passed by various areas of the municipality. (EN3) There have been three votes to extend the cost of APSA to Hillside voters, all of which failed. These previous votes on the extension of police service areas were made contingent on a "yes" vote by a majority of the voters residing in the area to be included.

Consistent past legislative interpretation should be given substantial weight by a court when construing an ambiguous term. Smiley v. Holm, 285 U.S. 355, 369 (1932); Kenai Peninsula Borough v. Andrus, 436 F. Supp. 288, 291 (D. Alaska 1977), aff'd, 612 F.2d 1210 (9th Cir. 1980), aff'd sub nom, Watt v. Alaska, 451 U.S. 259 (1981); Public Defender Agency v. Superior Court, 534 P.2d 947, 952 (Alaska 1975). The Assembly's consistent interpretation has been that if a service area was to be created, or an

area added to an existing service area, a separate vote was required by voters residing in the newly created or added area, and approved by a majority of those voting in that area.

It is clear that until this election, and the ensuing litigation, the Assembly consistently interpreted "area affected" as meaning the area in which service was to be created or to which service was to be extended. Indeed, that is why the Assembly went through the charade of framing AO 96-30(S) as an abolition and creation of service areas, instead of an alteration of the geographic boundaries of APSA. The Assembly believed that an alteration of the boundaries of APSA would have required the separate approval of the Hillside voters.

The court dismisses these past interpretations of the Charter, indicating that previous votes do not bind the Assembly to the interpretation that "area affected" means the area annexed. Slip Op. at 14. The court concludes that is not what the Assembly meant by "area affected," relying on the 1979 passage of AMC 27.10.010(A) and the Berns memos that preceded its passage. I cannot conclude, based on the legislative history, the language of the Charter, and the past

interpretation of the Charter, that the court has reached the correct result.

D. No Significant Change Is Contemplated in the Delivery of Service.

Assuming that the court has reached the correct result, and that "area affected" can be broader than the area annexed, there is still a question whether the proposed annexation of Hillside into APSA imposes a substantial change in "cost, quality, quantity or other factor affecting the delivery of service" received by residents of APSA.

The court concludes that a significant change in taxes would qualify as a "cost" under AMC 27.10.010(A). Slip Op. at 16-17. This is based on one sentence in one of the 1979 memoranda from Municipal Attorney Berns to the Assembly. In noting two possible definitions for "area affected," the second option provided "[t]he area affected is the area described under (1) above, plus any other area whose tax rate will be changed substantially by the . . . alteration . . . of a service area." There is no indication that the Assembly adopted Mr. Berns' definition. Even if the Assembly did adopt his definition, there is no indication it meant the word "cost," as included in the ordinance, to encompass a

reduction in tax rates, rather than an increase in tax rates.

There is no evidence that the actual "cost, quality, quantity or other factor affecting the delivery of service" in the "area affected," as defined by the Assembly, will change, only that real property taxes will increase in the area annexed. AMC 27.10.010(A) expressly requires that the Assembly find a "significant change in the cost . . . affecting the delivery of service" before an area can be included in the "area affected." The MOA has not demonstrated any change in cost affecting the delivery of service. Memoranda before the Assembly demonstrated that the police budget will not change, nor will services change. The only change will be a shifting of the revenue source for the police budget, which is not a cost affecting the delivery of service. (EN4) Despite this, the court concludes that the Assembly must have inferred a significant change in cost affecting the delivery of services within APSA. Such a conclusion is not supported by anything in the record.

III. LACK OF DECISIONAL DOCUMENT

Assuming again that the court is correct about the scope of "area affected," and that a shifting tax burden is a "cost" under the municipal code, this

case must still be remanded for appropriate legislative findings by the Assembly.

The MOA concedes that the Assembly did not produce a decisional document setting forth legislative findings which might support a determination that there will be significant change in "the cost, quality, quantity or other factors affecting the delivery of service within" APSA and the area to be annexed. Slip Op. at 19. Indeed, the Assembly made no determination at all. Despite this flaw, the court concludes that it can cobble together bits and pieces of select information from which it can infer that the Assembly could have made findings which might support the requisite conclusion. (EN5) These bits and pieces of information are from documents and testimony that were presented to the Assembly not only with regard to AO 96-30(S), but from proposed ordinances that were rejected by the Assembly.

A. The Law Requires a Decisional Document.

Judicial review of action taken by an administrative body is to ensure that the body "has given reasoned discretion to all the material facts and issues." Southeast Alaska Conservation Council v. State, 665 P.2d 544, 549 (Alaska 1983)

(citation omitted). If an important factor is not considered, a decision is regarded as arbitrary. State v. 0.644 Acres, More or Less, 613 P.2d 829, 833 n.13 (Alaska 1980). This review is facilitated by decisional documents which set forth the basis for an administrative body's actions.

This court consistently has stressed the importance of decisional documents when asked to review action taken by an administrative body. Trustees for Alaska v. State, 795 P.2d 805, 809 (Alaska 1993) (the facts and premises on which a best interests determination is based should appear in Department of Natural Resources' decisional document); Alaska Survival v. State, 723 P.2d 1281, 1287 (Alaska 1986)(decisional document should disclose that the agency has taken a hard look at factors, and engaged in reasoned decision making); Ship Creek Hydraulic Syndicate v. State, 685 P.2d 715, 717 (Alaska 1984)("The very essence of arbitrariness is to have one's status redefined by the state without an adequate explanation of its reason for doing so . . . [t]his court possesses the authority to require [quick take] condemnors to file decisional documents in conjunction with their use of declarations of takings").

In Southeast Alaska Conservation Council we commented:

> A decisional document, done carefully and in good faith, serves several salutary purposes. It facilitates judicial review by demonstrating those factors which were considered. It tends to ensure careful and reasoned administrative deliberation. It assists interested parties in determining whether to seek judicial review. And it tends to restrain agencies from acting beyond the bounds of their jurisdiction.
>
> In the present case, the review conducted by the superior court should have focused on the decisional document. If the document was found to contain an inadequate reasoned explanation, the court was authorized to remand it to the agency for supplementation instead of conducting a trial.

665 P.2d at 549 (footnotes omitted).

The requirement of a decisional document received amplification in Ship

Creek Hydraulic Syndicate v. State, 685 P.2d 715 (Alaska 1984):

> Some decisions are relatively unimportant, and the trouble of explaining them in writing could possibly outweigh any value a written explanation would have. In other cases, the legislature may have specified the procedures an administrative agency must follow, and in order to avoid trespassing on the legislative domain courts should refrain from imposing their own notions of proper procedure on the agency. Furthermore, due process does not require an agency to explain and defend every decision it makes.
>
> Nevertheless, if a statute requires reasoned decisions, and the legislature has not expressly or by implication limited judicial authority to decide how to review administrative action, courts may and should require agencies to explain their decisions.

Id. at 717-18 (internal citations omitted).

The Assembly operates predominately as a legislative body, yet in particular situations it is charged with the responsibility for making adjudicative findings. Adjudicative facts are "facts about particular immediate parties." Kenneth Culp Davis, Administrative Law Treatise, sec. 10.5 (1994). Here, the Assembly must determine if the proposed ordinance causes a significant change in the cost affecting the delivery of service to APSA. The Assembly's determination is subject to judicial review in the same manner as actions taken by any administrative agency. This court infers that the Assembly made a finding of fact that the proposed ordinance caused a significant change in cost to the delivery of service to APSA. However, there is no basis for reviewing the Assembly's decision unless findings are contained in a decisional document. (EN6)

The Assembly's own interpretation of the Charter also requires it to make a finding of significant change within the area affected as a predicate for determining who is eligible to vote on the service area change. AMC 27.10.010(A)-("[T]he term 'area affected' shall mean that area determined by the assembly to be subject to significant change . . . .")

The court determines that "reasonable and not arbitrary" is the standard of review for factual determinations made by the Assembly. Slip Op. at 8-9. We have previously held that an agency's decision is considered arbitrary when it fails to include consideration of an important factor in its decisional document. The Assembly cannot meet this standard when we cannot fulfill our role of ensuring that the Assembly "has given reasoned discretion to all material facts. . . ." If we are to defer to Assembly determinations that are reasonable and not arbitrary, it is necessary to require such factual determinations be contained in a decisional document.

It is impossible to judge whether the Assembly's inferred determination of significant change is arbitrary, because the Assembly has not made a finding. This failure is critical enough to require reversal, even if the court is correct about the meaning of the legislative history, the scope of the definition of "area affected," and the significance of the change wrought by the vote.

B. The Assembly Failed to Consider the Significance of the Change to APSA.

AMC 27.10.010(A) requires the Assembly to make a finding of significant

change before APSA can be included in the "area affected." Cost is the only issue, since it is conceded that it is the intent of the ordinance that there will not be any significant change in the quality or quantity of service to either APSA or the area annexed.

The three documents the MOA cites as supporting the finding of significant change are (1) the preamble to a proposed ordinance ("Hillside Police DTZ") which ultimately failed; (2) the Dusek memorandum analyzing Mayor Mystrom's proposed AO 95-231, and the proposed 1996 police budget; and (3) the Moyer Summary of Economic Effects of AO 96-30, introduced by Assembly member Von Gemmingen, which identifies an approximate real property tax savings of $40 per $180,000 assessed value for APSA real property owners, but a $600 increase for real property owners in the area annexed. None of these documents constitute a legislative finding that there is a significant change in the "cost . . . affecting the delivery of service" to APSA and the proposed area annexed. What they contain could not provide a basis for such a determination, since the ordinance would establish only "a more equitable means . . . to share in the cost[]."

In sustaining the Assembly's action, the superior court concluded ". . . a

review of the totality of the information before the Assembly reveals that the Assembly had a reasonable basis to conclude that all Anchorage voters will be subject to significant change. . . ." This court appears willing to assume, as did the superior court, that the Assembly has made such a determination. The preamble to the failed "Hillside Police DTZ" ordinance does not support a finding of significant change. It only reiterates concerns that Hillside is not paying for police service it benefits from. The only remaining evidence the MOA attorney could cite that bears on the question is the Dusek memorandum and the Moyer memorandum, which differ substantially regarding the increase in real property taxes in the area annexed. Since there is no basis in the record for giving more weight to one author's views than to the other, and since neither author suggests that there will be a significant change in the cost of the delivery of service, these memoranda provide no basis for inferring that the Assembly made a finding of significant change.

The court, rather than relying exclusively on the documents the MOA cited as supporting the finding of significant change, reviewed five different documents contained in the record. The court does not determine that the Assembly made factual findings on the failed proposals.

Rather, the court relies on the record relating to the various proposals and determines that the Assembly "recognized" that APSA was within the area affected. Slip Op. at 21. The court first relies on the determination by the Assembly that Hillside area residents "substantially benefitted" from safe city functions without having to pay for them. Slip Op. at 22. Benefit derived from a service area is not one of the criteria the Assembly is required to evaluate in determining whether APSA residents were subject to "significant change."

The second memorandum the court relies on to infer the finding of "significant change" is a memorandum which concluded that redistribution of the cost of police service was "fair and equitable." Slip Op. at 23. Again, these are not the factors the Assembly is obligated to review for its factual findings.

The third memorandum the court relies on to support its inference contains the statement that APSA residents are "paying higher property taxes than they should" because Hillside does not pay for safe city functions. Slip Op. at 23. This is a statement in the introduction of a memo from the Mayor on one of the failed proposals. The memorandum highlights again the concern of the Mayor - Hillside residents are getting subsidized

police service when they come into the city. This memorandum does not support a finding of significant change in the delivery of service to residents of APSA.

The fourth item relied on by the court is the attachment to the memorandum from the Mayor. Slip Op. at 23. This "Summary of Economic Effects" again reiterates the benefits accruing to Hillside residents. It uses the mill rate on APSA residents to determine the tax rate for the area annexed. It does not support the court's inference.

Finally, the court cites a memorandum on another failed proposal which again discusses the fairness of taxing Hillside area residents. Slip Op. at 24. The court offers no indication of how this memorandum supports a finding of significant change.

From these five documents the court infers that the Assembly concluded "that APSA would be subject to 'significant change' in the cost of delivering service to it." Slip Op. at 24. This is despite the fact that not one of these documents indicates that there will be any change in the cost of delivering service to APSA. And not one of these documents addressed AO 96-30(S).

IV. NO SIGNIFICANT CHANGE

Even if we once again assume the court is correct, and the Assembly determined by inference that there would be a significant change, that finding would be arbitrary. The proposed area affected is two discrete areas, one of which (APSA) now pays for services, the other of which (the area annexed) does not. The MOA asserts that the significant change in APSA is an approximate $40 reduction in annual property taxes per $180,000 of assessed property valuation. This is a tax reduction that may never be implemented. The $2.2 million cost of police protection allocated in the budget to the area annexed for "safe city" functions amounts to less than 6% of the police budget from real property taxes ($36,707,440), and less than 4.7% of the entire police budget ($42,713,100). The mill rate in APSA would be reduced from 3.62 to 3.40, while the mill rate in the area annexed would increase from 0.00 to 1.70. The only significant change that is apparent is that which befalls citizens of the area annexed. (EN7)

Apparently the court agrees that a speculative $40 reduction in property taxes in APSA is not a significant change. Instead, the court looks to the shifting of the tax burden from APSA to the area annexed, finding that the $2.2 million shift is enough to be significant, despite the fact that no taxes may

be reduced in APSA in fact. Slip Op. at 25. However, AO 96-30(S) is intended to leave the police budget unchanged, and the quality and quantity of service unchanged. All that will change is that the cost of police service will be more "equitably" shared by increasing the tax base.

One Assembly member, in an affidavit, explained the discussions held prior to the passage of AO 96-30(S): ". . . the discussion among Assembly members and with the Mayor concentrated on how to find more money to pay ongoing costs of police overhead, whether Hillside residents should pay for police protection, and various political means of expanding police service to the Hillside without a separate Hillside vote of its residents."

The court stresses the benefit Hillside residents obtain from the Anchorage Police Department, including emergency services and investigation of major crimes in the Hillside area. Slip Op. at 4. The court finds it significant that about thirty APD officers reside in the Hillside area and drive their patrol cars home, providing a limited patrol service. Slip Op. at 4. The court also finds it significant that Hillside residents, while representing ten percent of the Anchorage population, represent seventeen

percent of the assessed property value. Slip Op. at 4. These facts, while pointing to an inequity in the funding of police service within the boundaries of APSA which inures to the benefit of non-residents of APSA, do not support a determination that there will be a significant change in cost which affects the delivery of police service to residents residing within APSA.

V. CONCLUSION

The decision of the superior court should be reversed. The superior court found that the voting scheme in AO 96-30(S) rested on a correct determination of the areas affected by Propositions 13 and 14:

> Giving the appropriate [deference] to legislative action, a review of the totality of the information before the Assembly reveals that the Assembly had a reasonable basis to conclude that all Anchorage voters will be subject to significant change in cost, quality, and quantity of police service if a citywide police service area is created.
>
> The change will affect the tax burden in the old, as well as

> the new[,] police service area. It will affect the quality of service and its cost throughout the city. It will affect the scope, consistency, and uniformity of delivery of police services citywide to all Anchorage residents. It may affect the quality of police services citywide.

This decision includes findings that are manifestly wrong, including a finding that the quality of police service citywide will be affected, as well as the scope, consistency, and uniformity of such services.

The case should be remanded with instructions that judgment be entered in favor of HALO, declaring that a service area cannot be created or altered unless by a majority vote of those people residing within the boundaries of the area burdened with tax liability it has never before borne. It is these people who make up the "area affected." Surely the area affected cannot include those who by their vote can shift their tax burden onto someone else.

Even if we accept the proposition that one service area can foist its tax burden on an area that has chosen not to be taxed, the issue whether there will be

a substantial change in cost affecting the delivery of police service should be remanded to the Assembly for appropriate findings. Although on this record I view the Assembly's actions to be arbitrary and capricious, we need not foreclose the Assembly from authoring a decisional document which attempts to make the requisite determination of substantial change affecting the delivery of service, thereby justifying a vote by the people residing in APSA.

ENDNOTES:

1. A unified municipality, as defined under Alaska law, is "a single unit of home rule government" that unites "[a] borough and all cities in the borough." AS 29.06.190. A unified municipality is formed under a unification charter. AS 29.06.190-.410. The charter must be drafted by an elected commission and then ratified by voters in certain combinations that ensure popular approval both in and out of the borough's cities. AS 29.06.270, .360. Upon ratification, the charter "operates to dissolve all municipalities in the area." AS 29.06.370.

2. AMC 27.030.130 defines APSA as

> the areas formerly known as the City of Anchorage, the Spenard Service Area of the Greater Anchorage Area Borough, the Muldoon-Sand Lake Area, the Dimond Industrial Park Area, the Oceanview-Klatt Area, the Basher Area and a portion of the Far North Bicentennial Park, the Southeast Midtown Area, the Independence Park and surrounding area, Section 16, except Boling Subdivision, and the Eagle River-Chugiak Area.

3. Our conclusion is consistent with case law from other jurisdictions. For example, a California court in San Bernardino Fire & Police Protective League v. City of San Bernardino, 18 Cal. Rptr. 757, 766 (Cal. App. 1962), examined legislative action similar to the type HALO asks us to review. That court scrutinized a decision by the San Bernardino city council in which the city council fixed city employees' salaries. Id. at 761. The city's charter required the city council to set the salaries in accordance with the salaries of employees with similar duties in certain other cities. Id. Thus, prior to setting the salaries, the city council had to make a factual determination about which employees in the other cities had similar duties to San Bernardino employees. Id.

at 766. The court concluded that the city council's "fact finding function" was one that "preced[ed] legislative action" and would not be disturbed "in the absence of fraud or arbitrary action." Id.

4. That individual testified at the hearings "that she feels that the people only should vote . . . . She doesn't feel that public hearings and then having the assembly make the decision is good enough -- it can't tell what a majority wants."

5. The dissent relies upon language in Article IX, Section 9.01(a) of the Charter that refers to situations where "no qualified voter resides within the area." Dissent at 32-33. This provision does not undermine our conclusion. The size of the "area affected" depends upon the particular effects of a proposed service area change. In some cases, both the original service area and the area to be added will be "affected." In other cases, only the area to be added will be "affected." Although in the latter instance, the language cited by the dissent would control, it does not follow that an original service area could never be "affected" by an addition to that area.

6. The record suggests an explanation for why the Assembly did not make express

findings when it chose to use the two-step process of Propositions 13 and 14. It indicates that, although the Assembly thought it might have the power to expand a service area without a separate vote of the residents of the area to be added, it was not sure. However, the Assembly was certain that when a new service area was created or abolished, the "area affected" was coextensive with the created or abolished area. Therefore, the Assembly framed the expansion of the service area as an abolition of APSA and a creation of NAPSA. In light of this conclusion, the Assembly apparently thought it would have been redundant for it expressly to find that the "area affected" by Proposition 13 was APSA and the "area affected" by Proposition 14 was the area in NAPSA.

7. The record indicates that the Assembly defined "safe city functions" as

> not only general police protection services other than [neighborhood patrols], but also prosecution of crimes, incarceration of prisoners, DWI enforcement, traffic enforcement, criminal investigations of person and property crimes, bicycle patrol of recreational areas, juvenile crimes unit, narcotics investigations and crime prevention services. . .

. All of these functions protect the quality of life and ensure all citizens receive the benefits of police protection services when traveling, shopping, working and availing themselves of the cultural and recreational facilities in Anchorage.

8. HALO refers to a comment by Assembly Member Fay Von Gemmingen in which she agreed that the cost and level of police service would not change as a result of AO 96-30(S). That statement does not contradict the fact that, after AO 96-30(S) takes effect, it will cost $2.2 million dollars less to provide safe city functions to residents that live in APSA. While it is true that the cost of providing safe city services to NAPSA will not increase, $2.2 million dollars of the cost that was borne by residents of APSA prior to AO 96-30(S) will be shifted to the Hillside. Therefore, the cost of providing service to the area known as APSA prior to AO 96- 30(S) will fall.

9. The "Summary of Economic Effects" that analyzes AO 96-30(S) estimates the tax savings to APSA residents to be approximately $40 per year on a typical $180,000 home.

10. AMC 6.20.020(A) states that "[g]eneral obligation debt of service areas must receive dual majority votes."

ENDNOTES (Dissent):

1. The same may be said of tourists, residents of the Mat-Su area who also work in APSA, and more to the point, residents of Rainbow, Bird, Indian, Girdwood and Portage, who reside within the unified municipality.

2. I use the term "area annexed" throughout to indicate the area to be newly taxed for police service, as distinguished from the area which is already subject to APSA taxation.

3. The following areas have been added to the APSA: Muldoon/Sand Lake, 7/1/78; Eagle River/Chugiak, 1/1/79; Dimond Industrial Park, 7/1/79; Oceanview/Klatt, 7/1/79; Glenn Heights, 1/1/87; Bicentennial Park, 1/1/94; Southeast/Mid Town, 1/1/94; Basher/Far North, 1/1/94; Independence Park, 1/1/94; Section 16, 1/1/95.

The court acknowledges that prior consistent interpretations by the Assembly may be probative of that term's meaning. The court finds such a construction "particularly appropriate" here where the

Charter gives the Assembly the power to establish the procedures for altering a service area. Slip Op. at 15. The court then dismisses this argument, based on the 1979 memo from Municipal Attorney Berns, discussed above. However, the Assembly has continued to place the same interpretation on the term "area affected" in the seventeen years since that memo was submitted to the Assembly, and since the passage of AMC 27.10.010(A). Most of the service area extension votes were taken after the codification by the Assembly of the term "area affected."

4. The MOA has repeatedly stated that this ordinance shifts the burden of providing funding for the Anchorage Police Department. It has not presented any evidence that taxes in the APSA will change, only that APSA property owners will bear a smaller portion of the police budget from the property taxes they do pay. Taxes in the APSA may or may not be affected by this ordinance, depending on future action of the Assembly. The ordinance itself provides for no change in the taxes for residents of APSA.

5. The court suggests that the Assembly did not make any findings regarding significant change because the Assembly thought it "might not" have the power to alter a service area without a separate vote of the residents of the area to be

added. However, the Assembly was certain that "area affected" was coextensive with areas being created and abolished. Slip Op. at 19, n.6. I suggest that the Assembly did not make the appropriate findings because it was attempting to disguise its action as being abolition of one area and the creation of another. The court agrees that we should look beyond the Assembly's charade and look instead to the substance of the process initiated by AO 96-30(S). Slip Op. at 9. I agree with the court that AO 96-30(S) was "in substance an alteration of APSA to include the Hillside." Slip Op. at 10. Having conceded this, I do not believe the court may use the municipality's failed attempt to divide the annexation into two votes as a justification for the Assembly's failure to make the required findings of fact.

6. Under the federal Administrative Procedures Act, an agency must always have written findings in a formal adjudication. 5 U.S.C. sec. 557(3)(A). In an informal adjudication an agency can be required to produce a written finding if there is an insufficient basis for the reviewing court to determine if the finding is arbitrary. PBGC v. LTV Corporation, 496 U.S. 633 (1990).

7. Even if APSA property owners are credited $40 per $180,000 assessed valua-

tion to make up the $2.2 million in taxes to be shifted, I am not persuaded that this is a "significant change," leaving aside the issue of how cost shifting will affect the delivery of service. The people who are protected by the Charter's Bill of Rights are all of those entitled to vote, not simply those who own property.

APPENDIX B - BRIEF OF APPELLANTS (EXCERPT), 8/6/96

IN THE SUPREME COURT OF THE STATE OF ALASKA

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and JAMES M. CRAWFORD,	)
Appellants,	)
vs.	)
ANCHORAGE, A Municipal Corporation,	)
Appellee.	)

Superior Court Case No. 3AN-96-1661 CI
Supreme Court Case No. S-7731

APPEAL FROM THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE
CASE NO. 96-01661 CI
THE HONORABLE KAREN L. HUNT

BRIEF OF APPELLANTS (EXCERPT)

II. AO-96-30(S) Violates Equal Protection Under the United

States and Alaska Constitutions.

Regardless of whether Southeast Anchorage residents were entitled to a separate vote on the Police Service Area change under the Home Rule Charter, they are also entitled to equal protection of the law under State and Federal Constitutions. Under the Equal Protection Clause of the Alaska Constitution, "it is implicit in our constitutional structure that similarly situated communities be treated in a similar manner." *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371-2 (Alaska 1987). Following *Kenai Peninsula Borough*, three analytical steps would be taken to determine if AO 96-030(S) violates equal protection. The first step is to identify the constitutional interest to be protected. The second to determine whether the purpose served by the ordinance is legitimate. If the purpose of AO 96-30(S) is to simply "denigrate the voting power" of Southeast Anchorage voters, the ordinance is invalid on its face, and the Court need look no further. *Id.* at 1372. If the Court finds that the Assembly's purpose has some legitimacy, however, a third step is required. That step requires the Municipality to prove that no "less restrictive alternative" is available. *Id.* at 1371. At this point, the Court examines the means employed to

further the government's goals, considering whether other constitutional means of achieving the same goal are appropriate. "If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated." *Id.*

Two distinct constitutional interests are involved here. The first is the individual voter's right to vote, free of invidious discrimination. That right is a fundamental right, the highest of rights. *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982). The second right at issue here is the collective right of voters to fair and effective representation, while not a "fundamental" right, is a "significant" constitutional right. *Kenai Peninsula Borough v. State* at 1372.

The goal of AO 96-39(S) was quite simply to expand the existing Police Service Area to Southeast Anchorage without a separate vote of Southeast Anchorage residents [Excs. 84, 91], leaving the cost and "level of police service" in the existing Police Service Area "basically unchanged." [Exc. 163]

A. Invidious Discrimination - Right to Vote

Until February 13, 1996, the Anchorage Assembly has always given citizens of outlying areas a right of separate vote over whether new municipal services would be extended into their neighborhood. No evidence was offered by the Municipality below to contradict testimony of its former Municipal Attorney who testified that during his sixteen years of service with the Greater Anchorage Area Borough and the Municipality of Anchorage, "an affirmative approval of a majority of the residents of a new area to be provided with municipal services was required before those services could be extended into that area." [Exc. 140] The boundaries of the Anchorage Police Service Area have been expanded under the Charter some ten times since unification, each by a separate vote of the residents within the area to be annexed. [R. 88; Exc. 79] The Municipality did not rebut testimony of its former Municipal Clerk Mary Coffey that "expansion of the Anchorage Police Service Area after unification was accomplished only upon a separate vote or consent of the residents within the area to receive the new services." [Exc. 133] Below, the City was unable to show <u>even</u> <u>one</u> <u>time</u> before February 13, 1996, where any municipal service had been extended into an area previously unserved without a separate, legally binding vote of the residents of

that area. Motivated by the repeated refusal of Southeast Anchorage to join the police service area three times previously, the Assembly singled out Southeast Anchorage voters in 1996 for a "combined" vote on the issue. The vote on Proposition 14 was cleverly structured in such a way that even if they voted unanimously against the service area, Southeast Anchorage voters could no longer stand in the way of the Assembly's wishes and were effectively stripped of their franchise by the Assembly's action.

B. Denial of Fair and Effective Representation Through a Gerrymander

The right of "fair and effective representation" was recognized by this Court in *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1366 (Alaska 1987). Applied here, it is the right to "group effectiveness or an equally powerful vote" with every other geographic area of Anchorage on the issue of extension of new police services. The political gerrymander wrought by AO 96-30(S) violates that right.

Gerrymandering is "the deliberate and arbitrary distortion of district boundaries and populations for partisan or personal political purposes." *Kirkpatrick v. Preisler*, 89 S. Ct. 1225,

1232 (1964) (Fortas concurring). Concurring in *Karcher v. Daggett*, 103 S. Ct. 2663, 2669 (1983), Justice Stevens stated that gerrymandering violates the Equal Protection Clause when it serves "no purpose other than to favor one segment--whether racial, ethnic, religious, economic, or political--that may occupy a position of strength at a particular time or to disadvantage a politically weak segment of the community." Justice Stevens continued:

> There is only one Equal Protection Clause. Since the Clause does not make some groups of citizens more equal than others . . . its protections against vote dilution cannot be confined to racial groups. As long as it proscribes gerrymandering against such groups, its proscription must provide comparable protection for other groups as well. As I have previously written: 'In the line-drawing process, racial, religious, ethnic and economic gerrymanders are all species of political gerrymanders. (citations omitted)

To this Court as well, gerrymandering is "the dividing of an

area into political units 'in an unnatural way with the purpose of bestowing advantage on some and thus disadvantaging others.'" *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992). Footnote 11 of *Hickel* defined the essence of gerrymandering:

> A name given to the process of dividing a state or other territory into the authorized civil or political divisions, but with such a geographical arrangement as to accomplish an ulterior or unlawful purpose, as, for instance to secure a majority for a given political party in districts where the result would be otherwise if they were divided according to obvious natural boundaries.

Submersion of the votes of an identifiable political, economic, and geographically distinct group of voters into those of a hostile group many times larger is precisely the type of gerrymander which caused the Alaska Supreme Court in *Kenai Peninsula Borough v. State*, supra, to declare the "donut district" unconstitutional. In that case, Anchorage voters were submerged into a larger electorate comprised of the Matanuska Valley, Copper River Valley, Valdez, and Prince William Sound.

Although South Anchorage residents gerrymandered into the "donut district" had no independent right to vote in a separately configured district, this Court nevertheless declared the gerrymander void, as a denial of equal protection.

The Municipality has offered only the thinnest justification for application of a political gerrymander to Southeast Anchorage voters: In order to solve the "free rider" [Exc. 151] issue and to generate a per capita tax savings in the "old" Police Service Area equal to the cost of an annual six-pack of beer,[1/] The Municipality effectively disenfranchised every Southeast Anchorage voter in the April 1996 election. Because the Municipality "does not dispute the fact that it is taking the present step because Southeast Anchorage previously voted not to join the police service area" [R. 429; Exc. 138], the clear and purposeful denigration of the voting power of Southeast Anchorage residents brought about by AO 96-30(S)

[1/] Greg Moyer's analysis of economic effects of AO 96-30(S) and the resulting "per capita" impacts in the existing Police Service Area were discussed by Appellants at some length at [R. 55-56]

renders the ordinance unconstitutional on its face under the second analytical step of *Kenai Peninsula Borough, supra*. What made Proposition 14 so politically attractive to voters in April 1996 was the same feature which renders it constitutionally repugnant: The proposition allowed voters of the existing Police Service Area to solve the "free rider" problem for themselves because they outnumbered Southeast Anchorage voters 10:1. With no reason to oppose the measure, and a minuscule reduction in taxes, those voters followed the Assembly's lead and executed he gerrymander.

Even if this Court determines that a legitimate purpose is served by AO 96-30(S), however, the Municipality must still satisfy the highest burden and show that its purpose could not be effected without the gerrymander. That burden is upon the Municipality itself, not the citizens whose constitutional rights are violated. Below, the Municipality did not prove or even argue that municipal police services could be extended to Southeast Anchorage only through a political gerrymander. We were never told, for example, why the Municipality could not expand the Police Service Area into that area by the Charter amendments considered by Mayor Tom Fink in 1992. Moreover, we were never told why

Southeast Anchorage residents have not been allowed to create their own separate service area[2/] which effectively resolves the "free rider" issue so offensive to the Assembly. The failure of the Municipality to prove or even argue that less offensive means are not available to achieve its goal of expanding the Police Service Area renders the discriminatory gerrymander of AO 96-30(S) unconstitutional under the Equal Protection clause.

[2/] Also before the Assembly in February 1996, was an ordinance authored by several Assembly members which would have allowed South Anchorage residents a vote on creation of a separate South Anchorage Police Service Area which would be operated much in the same way as Hillside road service areas are currently run. [Exc. 66-70] Vigorously opposed by the Mystrom Administration, AO 96-14(S) was never adopted by the Assembly and Hillside residents were denied the opportunity to create their own police service area.

APPENDIX C - FINAL JUDGMENT: REMAINING ISSUES, 7/24/96

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and JAMES M. CRAWFORD,

Plaintiffs,

vs.

ANCHORAGE, A Municipal Corporation,

Defendant.

Case No 3AN-96-1661 CI

FINAL JUDGMENT: REMAINING ISSUES

Upon Plaintiffs' motions for summary judgment on the remaining issues in this case and Defendant's cross-motion for summary judgment; and for the reasons set forth in this Court's order of July 17, 1996; it is hereby ORDERED, ADJUDGED and DECREED that Plaintiffs' complaint against the Municipality of Anchorage is

dismissed with prejudice and that Defendant shall have judgment against Plaintiffs on all remaining issues in this action.

An award of attorney's fees and costs, if any, may be addressed by separate motion and resolved by subsequent order of the Court.

DATED this 24 day of July, 1996.

/s/
Karen L. Hunt
Judge of the Superior Court

APPENDIX D - ORDER, 7/17/96

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and JAMES M. CRAWFORD,

Plaintiffs,

vs.

ANCHORAGE, A Municipal Corporation,

Defendant.

Case No 3AN-96-1661 CI

ORDER

Based on the reasons set forth by this court at the March 29, 1996 preliminary injunction hearing and the arguments made in the defendant's briefing,

IT IS HEREBY ORDERED that:

(1) Plaintiffs' Motion for Summary Judgment on Remaining Issues is DENIED;

(2) Defendant's Cross Motion for Summary Judgment on Remaining Issues is GRANTED;

(3) Plaintiffs' Motion for Summary Judgment Concerning Proposition 6 is DENIED.

DATED this 17th day of July, 1996 at Anchorage, Alaska.

/s/
Karen L. Hunt
Superior Court Judge

APPENDIX E - PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON REMAINING ISSUES (EXCERPT), 4/9/96

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and JAMES M. CRAWFORD,

Plaintiffs,

vs.

ANCHORAGE, A Municipal Corporation,

Defendant.

Case No 3AN-96-1661 CI

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON REMAINING

ISSUES (EXCERPT)

5. **AO 96-30(s) Denies Hillside Residents Equal Protection of the Law.**

Comments by counsel for the Municipality on March 29, 1996 conceding that the Municipality has never enlarged the boundaries of the APSA by the means attempted in AO 96-30(S) and the affidavit of former Municipal Attorney Jerry Wertzbaugher [App: 298-9] plainly establish disparate treatment of Hillside residents under that ordinance. As already briefed, that action impairs a "significant" constitutional interest and must be justified by the government "at the high end of the scale, that the legislation was motivated by a compelling state interest." *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 n.35 (Alaska 1987). That the sole purpose of AO 96-30(S) is to simply enlarge the existing Police Service Area remains undisputed; the only conceivable "benefit" some residents of Anchorage would receive from that action is a tiny[1/] reduction in real property taxes.

[1/] The only evidence before the Assembly at the time AO 96-30(S) was passed of the economic effects of the NPSA was a "Summary of Economic Effects" prepared by Budget Analyst Greg Moyer. That analysis revealed a $40 per year tax savings on a $180,000 house within the existing Police Service Area if it were enlarged to include the Hillside. See,

(continued...)

It is difficult to believe that tiny tax break - equal to the cost of a single six pack of beer - consititutes a compelling state interest.

AO 96-30(S) also violates Equal Protection by illegal gerrymandering. Given the political means utilized in of AO 96-30(S) to achieve its goal and the Municipality's own admission the ordinance was passed because the Hillside previously voted not to join the police service area, (See, MOA memorandum of March 25, 1996, p. 32) it cannot now be seriously disputed that the ordinance is purposefully structured to dilute Hillside votes. The gerrymander exists

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1/(...continued)
Ex. B, p. 7 attached to MOA Memorandum of March 25, 1996. If the economic effect of the NPSA were measured under procedures mandated by the Assembly under AR 95-142 [App: 329-30] which utilize a more realistic $100,000 value, the annual tax impact would be $22. If that figure is in turn divided by 3.66, the average family household size in Anchorage [App: 315] the per capita impact is about $6.74 per resident living in a typical single family home assessed by the City at $100,000. Mr. Moyer himself did not believe that impact was "significant" for purposes of AO 96-30(S). [App: 13, 17]

notwithstanding the court's determination that downtown residents are affected by formation of the new service area; the very structure of the ordinance is intended to dilute and render meaningless the right of Hillside residents to vote on the issue.

APPENDIX F - THE MUNICIPALITY OF ANCHORAGE'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION (EXCERPT), 3/25/96

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and JAMES M. CRAWFORD,

Plaintiffs,

vs.

ANCHORAGE, A Municipal Corporation,

Defendant.

Case No 3AN-96-1661 CI

THE MUNICIPALITY OF ANCHORAGE'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION (EXCERPT)

Plaintiffs finally reason that because AO 96-30(S) "dilutes" the vote of the Hillside it must constitute illegal gerrymandering. The Municipality does not dispute the fact that it is taking

the present step because the Hillside previously voted not to join the police service area. Those votes left the remaining taxpayers burdened with costs for police services that were properly the responsibility of the Hillside.

APPENDIX G - MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (EXCERPT), 3/1/96

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AREA G HOME AND LANDOWNERS ORGANIZATION, INC.

Plaintiff,

vs.

ANCHORAGE MUNICIPAL ASSEMBLY,

Defendant.

Case No 3AN-96-_____ CI

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (EXCERPT)

III. AO 96-30(s) Denies Hillside Residents Equal Protection of the Law.

An individual's right to vote has long been recognized by the Alaska Supreme Court as the most fundamental of

constitutional rights. In *Jordan v. Reed*, 544 P.2d 75, 81 (Alaska 1974), the court stated: ". . . the right to vote is a fundamental right and its denial ought to be strictly scrutinized by the courts." In *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982), the court again stated:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic are illusory if the right to vote is undermined. (Quoting *Williams v. Rhodes*, 89 S. Ct. 5, 10 (1968).

The court reiterated that position in *Acevedo v. City of North Pole*, 672 P.2d 130, 135 (Alaska 1983):

> In concerning the right to vote, we have stated that '[n]o right is more precious in a free country.' It is thus abundantly clear that [plaintiff] has asserted rights of paramount importance under the Alaska Constitution.

While AO 96-30(S) does not take away the right to vote *per se*, the ordinance clearly impairs the interest of Hillside residents in having their votes protected from disproportionate dilution by those of another geographic group or entity. The right to vote necessarily assumes that each voter is afforded the right to cast a vote undiluted because of that voter's particular place of residence. As the United States Supreme Court long ago recognized in *Reynolds v. Simms*, 84 S. Ct. 1362, 1384 (1964):

> Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discrimination based upon factors such as race . . . or economic status. (citations omitted)

The same court also observed that "[o]ne must be ever aware that the Constitution provides protection against 'sophisticated as well as simple-minded modes of discrimination.'" *Id.* at 1382.

Each voter living outside a service area has an individual right, as a voter, to be treated similarly to each other voter living outside a service area. Different treatment based upon place of

residence alone, would be invidious geographic discrimination against individual voters.

AS 96-30(S) effects invidious geographic discrimination by imposing liability for prior APSA bonded indebtedness upon Hillside voters, as principals rather than sureties, when this was not done to any of the other ten areas which have been admitted to APSA since unification. Since neither Hillside voters nor voters of the ten areas previously admitted to APSA resided in APSA prior to admission, they were not eligible to vote in service area bond elections, concerning whether such voters consented to be liable as principals for payment of debt service. However, voters in the other ten areas were not deprived of a fundamental right to vote because n one of the ordinances granting them admission to APSA forced residents of the newly admitted areas to assume liability, as principals, for prior service area bonded indebtedness.[1/] By imposing such liability upon the Hillside, when it was not imposed upon any of the ten areas

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1/ AO 77-285 [App. 4]; AO 78-145(S)[App. 50]; AO 86-100 [App. 57-66]; AO 92-170 [App. 67-7-]; AO 93-24 [App. 80]; AO 93-28 [App. 84-85]; AO 93-189 [App. 92-94]; AO 94-43(S)[App. 101-103].

previously admitted, Hillside voters will be subjected to different treatment based solely upon their place of residence. In essence, they will be disenfranchised on this issue, based solely upon geographic discrimination.

In a similar connection, the Supreme Court of Alaska has noted that "it is implicit in our constitutional structure that similarly situated communities be treated in a similar manner." *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371-3 (Alaska 1987). To our court, "a voter's right to an equally geographically effective or powerful vote, while not a fundamental right . . . represent[s] a significant constitutional interest." *Id.* at 1372. The nature of the interest involved, here, a "significant constitutional interest," is the most important variable in fixing the appropriate level of review of legislation thought to violate Equal Protection. Depending on the primacy of the interest involved, the state will have a greater or lesser burden in justifying the legislation. *Id.* at 1371.

Alaska's Equal Protection Clause is far more strict than that of the United States Constitution. It affords a greater degree of protection to Alaska residents than does the Equal Protection Clause of the Constitution of the United

States. *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 n.35 (Alaska 1987). "Depending on the level of review determined," the court wrote, "the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or at the high end of the scale, that the legislation was motivated by a compelling state interest." *Id.* at 1371.

The violation of Equal Protection wrought by AO 96-30(S) is its denial of "fair and effective representation" to Hillside residents by an enactment which denies them "an equally powerful vote" on the issue. *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1366 (Alaska 1987). Dilution of the Hillside vote is unconstitutional gerrymandering.

Gerrymandering is defined by the United States Supreme Court as "the deliberate and arbitrary distortion of district boundaries and populations for partisan or personal political purposes." *Kirkpatrick v. Preisler*, 89 S. Ct. 1225, 1232 (1964) (Fortas concurring). Justice Stevens, concurring in *Karcher v. Daggett*, 103 S. Ct. 2663, 2669 (1983), noted that gerrymandering violates the Equal Protection Clause when it serves "no purpose other than to favor one segment - whether racial, ethnic, religious, economic, or political - that

may occupy a position of strength at a particular time or to disadvantage a politically weak segment of the community." Justice Stevens continued:

> There is only one Equal Protection Clause. Since the Clause does not make some groups of citizens more equal than others . . . its protections against vote dilution cannot be confined to racial groups. As long as it proscribes gerrymandering against such groups, it proscription must be provide comparable protection for other groups as well. As I have previously written: 'In the line-drawing process, racial, religious, ethnic and economic gerrymanders are all species of political gerrymanders. (citations omitted)

Political gerrymandering also violates the Equal Protection Clause of the Alaska Constitution, which, as noted, is stricter than its federal counterpart. *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987). To the Alaska Supreme Court, gerrymandering is "the dividing of an area into political units 'in an unnatural way with the

purpose of bestowing advantage on some and thus disadvantaging others.'" *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992). Footnote 11 of *Hickel* defined the essence of gerrymandering:

> A name given to the process of dividing a state or other territory into the authorized civil or political divisions, but with such a geographical arrangement as to accomplish an ulterior or unlawful purpose, as, for instance to secure a majority for a given political party in districts where the result would be otherwise if they were divided according to obvious natural boundaries.

The use of a gerrymander to deny Hillside voters the same right to an undiluted vote, extended to voters of the ten previous "areas affected" who joined the Anchorage Police Service Areas, places each Hillside voter on a different plane than that of voters in the ten

other areas which were given an undiluted vote concerning whether to join the service area.

Kenai Peninsula Borough, supra, is dispositive of the mischief wrought by AO 96-30(S), and its wholesale denial of the right to fair and effective representation to Hillside residents. *Kenai Peninsula Borough* addressed state legislative reapportionment. The Kenai Peninsula Borough alleged that Senate District E, the "Donut" District, "included South Anchorage within the District in order to produce a rural constituency and to dilute the political power of Anchorage voters." Kenai asserted "that such a dissipation of voting strength is invalid, because it disfavors voters from a particular geographic area." The court held that the issue was "fair and effective representation." *Id.* at 1366.

The Alaska Supreme Court discussed "fair and effective representation" under the Equal Protection Clause of the United States Constitution, but found that "proof of purposeful discrimination alone is insufficient to state a cause of action for political gerrymandering" under the federal constitution, because federal case law required proof of past discrimination. Evidence of political gerrymandering in a single election was

insufficient under the federal standard. *Id.* at 1369.

The court then held political gerrymandering violated the Equal Protection Clause of the Alaska Constitution, even without a showing of past discrimination. In analyzing "fair and effective representation under the "uniform-balancing" test for equal protection under the Alaska Constitution, the court concluded that a voter's right to an equally geographically effective or powerful vote represents a significant constitutional interest. *Id.* at 1371-1372. Having found the right to "fair and effective representation" to be a "significant constitutional interest," the court utilized strict scrutiny of the State's interest in creating the gerrymander:

> The legitimacy of this purpose hinges on whether the Board intentionally sought to dilute the voting power of Anchorage voters disproportionately. Thus, if the Board sought to denigrate the voting power of Anchorage voters systematically . . . then such a purpose would be illegitimate . . . [T]he use of any secretive procedures

> suggests an illegitimate purpose.

Id. at 1372. After examining the evidence, the court concluded:

> The presentation of evidence that indicates when, considered with the totality of circumstances, that the Board acted intentionally to discriminate against the voters of a geographic area will serve to compel the Board to demonstrate that its acts aimed to effectuate proportional representation . . . Because our Equal Protection Clause is more stringent than federal equal protection clause, a showing of consistent degradation of voting power in more than one election will not be required; rather once the Board's discriminatory intent is evident, its purpose in redistricting will be held illegitimate unless the redistricting effects a greater proportionality of representation. . . .

> A totality of the circumstances assessment of the Board's reapportionment process is unnecessary here because the Board's intent is discriminatory on its face.

Id. at 1372. The court concluded:

> Because we conclude that the effect of the Board's intentional geographical discrimination in creating Senate District E tends towards disproportionately of representation and its purpose therefore is illegitimate, we hold the district unconstitutional under the Equal Protection Clause of the Alaska Constitution.

Id. at 1371. The Court held:

> Our holding that the Board did not have a legitimate purpose in constructing Senate District E renders it unnecessary for us to address the issue of whether there is a substantial relationship between the Board's means and ends.

Id. 1373 n.40.

Obviously, AO 96-30(S) dilutes the Hillside vote by submerging those votes into a much larger body of votes which outnumber Hillside votes by 10:1. On its face, the ordinance offers no justification for that action and, as discussed above, neither the Mayor not Assembly members offered any significant or compelling reason - such as imminent danger to the public - to justify formation of the new service area. Instead, the manifest political purpose of the means selected by the Assembly to create the new Police Service Area is to overpower a Hillside minority with a much larger majority, which currently receives municipal police protection and would have no apparent reason[2/] to object to extending municipal police services to the Hillside.

The ordinance is unconstitutional gerrymandering.

[2/] It is critical to note that Assembly sponsor of AO 96-30(S), Faye Von Gemmingen, clearly stated that "the cost and level of police service in the old Anchorage police service area would remain basically unchanged." Tr. p. 4 [App. 224].

APPENDIX H - COMPLAINT FOR DELARATORY AND INJUNCTIVE RELIEF (EXCERPT), 3/1/96

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AREA G HOME AND LANDOWNERS ORGANIZATION, INC.

Plaintiff,

vs.

ANCHORAGE MUNICIPAL ASSEMBLY,

Defendant.

Case No 3AN-96-_____ CI

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (EXCERPT)

COUNT TWO

Denial of Equal Protection of the Law

13. Art. I § 1 of the Constitution of Alaska declares that all Alaskans "are equal and entitled to equal rights, opportunities, and protection under the law." Similar rights are

guaranteed under the Constitution of the United States.

14. AO 06-30(S) violates constitutional guarantees of Equal Protection under the Constitutions of the United States and the State of Alaska because it deprives Hillside residents of the right to a separate vote in the "area affected" by creation or alteration of a service area. The ordinance invidiously discriminates against Hillside residents on the basis of place of residence and denies them fair and adequate representation. It is unconstitutional gerrymandering.

APPENDIX I - U.S. Constitution, art. I, § 10

U.S. Constitution - Article I

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peach, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

APPENDIX J - U.S. Constitution, amend. XIV, § 1

U.S. Constitution, Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX K - HOME RULE CHARTER, ANCHORAGE AREA CHARTER COMMISSION (EXCERPT), 9/16/75

HOME RULE CHARTER,
Anchorage Area Charter Commission
(Sept. 16, 1975)

ARTICLE II
BILL OF RIGHTS

This Charter guarantees rights to the people of Anchorage that are in addition to rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Alaska. Among rights guaranteed by this Charter area:

. . .

(2) The right of immunity from the creation or alteration of a service area, except upon a vote within the area affected.

ARTICLE IX
SERVICE AREAS AND ASSESSMENT DISTRICTS

Section 9.01 Service Areas

(a) A service area may be created, altered, or abolished only with the

approval of a majority of those voting on the question within the area affected, or, if no qualified voter resides within the area, with the written consent of the owners of all real property within the area affected. However, the Assembly, by ordinance may consolidate service areas in which services are provided by the municipality at the same level in each of the areas to be so consolidated.

APPENDIX L - ANCHORAGE MUNICIPAL CODE 27.10.010(A)

AMC 27.10.010(A)

A. A service area may be created, altered or abolished as provided in Charter section 9.01. As used in this title, the term "area affected" shall mean that area determined by the assembly to be subject to significant change in the cost, quality, quantity or other factor affecting the delivery of service therein if the proposed action is approved.

APPENDIX M - ANCHORAGE MUNICIPAL CODE 6.20.020(A)

AMC 6.20.020(A)

No general obligation bonded indebtedness may be incurred unless authorized by the Assembly and ratified by a majority vote of those in the municipality voting on the question, except that refunding bonds may be issued without an election. General obligation debt of service areas must receive dual majority votes.

APPENDIX N - ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE, AO NO. 96-30(S)

ANCHORAGE, ALASKA
AO NO. 96-30(S)

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS IN THE ANCHORAGE POLICE SERVICE AREA A BALLOT PROPOSITION TO ABOLISH THE EXISTING ANCHORAGE POLICE SERVICE AREA CONTINGENT UPON VOTER APPROVAL OF A BALLOT PROPOSITION APPROVING CREATION OF A NEW POLICE SERVICE AREA CONSISTING OF ALL AREAS OF THE MUNICIPALITY NORTH OF McHUGH CREEK AND MANDATING POLICE PROTECTION SERVICES IN THE NEW POLICE SERVICE AREA.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1: A ballot proposition containing substantially the following language shall be submitted to the qualified Municipal voters residing in the Anchorage Police Service Area (AMC 27.30.130) at the regular Municipal regular election on April 16, 1996:

Proposition ___

ABOLISHING THE

ANCHORAGE POLICE SERVICE AREA (CONTINGENT)

Shall the existing Anchorage Police Service Area be abolished contingent on and simultaneous with the creation of a new police service area which would include all areas of the Municipality north of McHugh Creek?

Abolishing the existing Anchorage Police Service Area would become effective only if approved by a majority of the qualified voters in the Anchorage Police Service Area voting on the question and the simultaneous creation of a new police service area consisting of all areas of the Municipality north of McHugh Creek approved by a majority of the qualified voters in the new police service area voting on the question.

If the proposition to dissolve the Anchorage Police Service Area and the proposition to approve the creation of a new police service area are both approved, police protection services would continue to be provided in the existing Anchorage Police Service Area and would also be extended to all areas of the Municipality north of McHugh Creek presently outside the Anchorage Police Service Area (the "Hillside") effective January 1, 1997. The new police service area would succeed to all of the assets

and liabilities, including bonded indebtedness, of the Anchorage Police Service Area.

Creation of the new police service area would enable the Municipality to levy and collect additional property taxes to finance police protection services in that part of the new police service area not presently taxed for such purpose (the "Hillside"). Property taxes presently levied for police protection services would continue.

Yes [ ] No [ ]

Section 2: A ballot proposition containing substantially the following language shall be submitted to the qualified Municipal voters in all areas of the Municipality north of McHugh Creek at the regular Municipal election on April 16, 1996:

Proposition ___

APPROVING CREATION OF A NEW POLICE SERVICE AREA AND MANDATING POLICE PROTECTION SERVICES THEREIN (CONTINGENT)

Shall the creation of a new police service area consisting of all areas of the Municipality north of McHugh Creek and mandating police protection services

therein beginning January 1, 1997 be approved?

Creation of the new police service area described above would become effective only if approved by a majority of the qualified voters in the area of the Municipality north of McHugh Creek voting on the question and the simultaneous abolition of the existing Anchorage Police Service Area approved by a majority of the qualified voters in the Anchorage Police Service Area voting on the question.

If the proposition to dissolve the existing police service area and the proposition to approve the creation of a new police service area are both approved, police protection services would continue to be provided in the existing Anchorage Police Service Area and would also be extended to all areas of the Municipality north of McHugh Creek presently outside the Anchorage Police Service Area (the "Hillside") effective January 1, 1997. The new police service area would succeed to all of the assets and liabilities, including bonded indebtedness, of the Anchorage Police Service Area.

Creation of the new service area would enable the Municipality to levy and collect additional property taxes in that

part of the new police service area not presently taxed to finance police protection services (the "Hillside"). Property taxes presently levied for police protection services would continue.

Yes [ ] No [ ]

Section 3: The Anchorage Police Service Area provided for in Anchorage Municipal Code Section 27.30.130 is hereby abolished, section 27.30.130 is hereby repealed and a new section 27.30.135 is hereby enacted to read as follows:

27.30.135 New Anchorage Police Service Area.

A. There is established, pursuant to section 9.01 of the Charter, a service area within the municipality to be the New Anchorage Police Service Area (NAPSA) of the municipality, as outlined on the map located in section 27.30.700. The New Anchorage Police Service Area consists of the areas formerly known as the City of Anchorage, the Spenard Service Area of the Greater Anchorage Area Borough, the Muldoon-Sand Lake Area, the Dimond Industrial Park Area, the Oceanview-Klatt Area, the

Basher Area and a portion of the Far North Bicentennial Park, the Southeast Midtown Area, Independence Park and surrounding area, Section 16, except Boling Subdivision, the Eagle River-Chugiak Area and all other areas of the Municipality north of McHugh Creek.

B. The New Anchorage Police Service Area (NAPSA) succeeds to all of the assets and liabilities, including bonded indebtedness, of the Anchorage Police Service Area.

C. Police protection services shall be provided in the New Anchorage Police Service Area.

Section 4: Section 3. of this ordinance shall become effective January 1, 1997 if, but only if, the propositions contained in Sections 1. and 2. of this ordinance become effective. The propositions contained in Sections 1. and 2. of this ordinance shall become effective immediately upon passage of the proposition if, but only if, both propositions are each passed by a majority of the voters voting on the question in their respective propositions. All other Sections of this

ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this ____ day of _____, 1996.

_____
Chair of the Assembly

ATTEST:

_____
Municipal Clerk

Supreme Court, U.S.
FILED
APR 3 1997
CLERK

No. 96-1409

In The
Supreme Court of the United States
October Term, 1996

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, AND JAMES M. CRAWFORD,

Petitioners,

vs.

ANCHORAGE, A Municipal Corporation,

Respondent.

On Petition for Writ of Certiorari
to the Alaska Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Municipality of Anchorage (MOA) objects to Area G Home and Landowners Organization, Inc.'s, (HALO's) statement of questions presented as being argumentative and repetitive. See Sup. Ct. R. 14(a). More importantly, the Municipality objects to HALO's statement of questions presented because it assumes matters of state law that have been conclusively resolved against HALO. Namely, HALO has no separate and distinct geographical identity under either the law of the State of Alaska or the Municipality of Anchorage. Furthermore, residents of the Anchorage "Hillside" have no "right" to a separate veto-vote under the Municipal Charter on service area decisions where the area affected by the decision is broader than the "Hillside." HALO's petition does not properly present any question of federal law for review.

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JURISDICTION

This Court lacks jurisdiction to review the Alaska Supreme Court's decision in Area G Home and Landowners Organization, Inc. (HALO), et al. v. Anchorage, 927 P.2d 728 (Alaska 1996), because the decision rests on state law that is independent of the alleged federal question and is adequate to support the judgment.

STATEMENT OF THE CASE

The Municipality of Anchorage (MOA) objects to HALO's Statement of the Case because it primarily consists of argumentative and conclusory legal assertions. The Municipality adopts the Alaska Supreme Court's statement of "Facts and Proceedings," (HALO App. at 3a-10a), as a concise statement of the nature of the dispute and procedural history of the case. The Alaska Supreme Court subsequently affirmed the Alaska Superior Court's ruling based on the same reasoning used by the lower court. (Id. at 34a)

ARGUMENT

A. There Are No Jurisdictional Grounds for Review

This Court lacks jurisdiction to review the decision in Area G Home and Landowners Organization, Inc. (HALO), et al. v. Anchorage, 927 P.2d 728 (Alaska 1996), because the Alaska Supreme Court's decision rests on state law that is independent of the alleged federal question and is adequate to support the judgment. See Coleman v. Thompson, 501 U.S. 722, 729 (1991).[1]

The Anchorage Municipal Charter provides that service areas can only be created, altered, or abolished by a vote of residents "within the area

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[1] For reasons unknown to the Municipality of Anchorage, HALO's petition is described as a "Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit." Emphasis added. The Court of Appeals has in fact had no involvement in this case and the Municipality understands HALO's petition to be directed to the Alaska Supreme Court.

affected." (HALO App. at 4a) A provision of the Anchorage Municipal Code which was adopted 18 years before the present dispute, AMC 27.10.010(A), provides that the term "area affected" means "that area determined by the Assembly to be subject to significant change in the cost, quality, quantity, or other factor affecting the delivery of service therein if the proposed action is approved." (HALO App. at 21a) The Anchorage Assembly determined that all residents within the proposed expanded police service area, and not simply residents of the "Hillside" area of Anchorage, would be "affected" by the proposed expansion of the police service area. Thus all residents within the new proposed police service area were entitled to vote. The Assembly's decision was upheld by both the Alaska Superior Court and the Alaska Supreme Court.

The Alaska Supreme Court's holding that the Anchorage Assembly had a reasonable basis to conclude that the entire proposed police service area was the proper voting unit was based on resolution of two questions of state law. The first question was whether the term "area affected" as used in Anchorage Municipal Charter meant either (1) the geographical area to be added to or removed from a service area or (2) the area determined by the Assembly to be subject

to significant change in terms of cost, quality, quantity or other factor affecting the delivery of the service. (HALO App. at 12a-13a) Based on the language of the Anchorage Municipal Charter, the legislative history of the Municipal Charter, and the Municipal Ordinance which adopted the second definition 18 years ago, the Alaska Supreme Court held that the second definition was the correct interpretation of the Charter. (HALO App. at 16a-17a, 20a-22a) This issue had nothing to do with federal law.

The second question presented to the Alaska Supreme Court was whether there was an adequate factual record that voters within the entire police service area were significantly affected within the meaning of the Anchorage Charter by the proposed action. The Alaska Supreme also answered this question in the affirmative. (HALO App. at 23a-31a) This issue also had nothing to do with federal law.

HALO's equal protection/gerrymandering claim (under both the federal and state constitutions) was wholly dependent upon the assumption that the Hillside alone was the "area affected," and that Hillside voters therefore had a protected right to a separate vote. HALO's complaint thus asserted the ordinance was unconstitutional because "it deprives Hillside

residents of the right to separate vote in the 'area affected' by creation or alteration of a service area." (HALO App. at 108a, emphasis added.)

In its brief to the Alaska Supreme Court, the Municipality stated:

> HALO's equal protection/gerrymandering claim is dependent upon the assumption that the Hillside area has a right under the Charter to a separate Hillside vote because it is the only "area affected" by AO [Anchorage Ordinance] 96-30(S). If the Hillside is indeed the only "area affected," AO 96-30(S) violates the Charter and, in some unusual sense, may also violate equal protection guarantees. If residents throughout the new Anchorage Police Service Area are affected by AO 96-30(S), however, then every voter in the affected area was given an equally powerful vote. HALO's equal protection/ gerrymandering claim thus turns on the merits of HALO's prior claim and adds nothing to the analysis of this case.

(MOA App. at 2a-3a) The Alaska Supreme Court agreed with this analysis. The court stated:

> HALO's equal protection claims depend upon the assumption that the Hillside area has a right under the Charter to a separate vote because it is the only area affected by AO 96-30(S). Because we have concluded that APSA [Anchorage Police Service Area] was within the area affected, the Assembly correctly permitted APSA residents to vote. Thus, every voter within the area affected by AO 96-30(S) was given an equally powerful vote, and no person's right to equal protection was violated.

(HALO App. at 31a-32a) Given the Alaska Supreme Court's interpretation of the Anchorage Municipal Charter, HALO's equal protection/gerrymandering claim cannot possibly apply to this case.

Alternatively stated, the United States Supreme Court cannot provide the relief requested by HALO without "reversing" the Alaska Supreme Court's decision regarding what is the proper voting unit for this service area decision under the Anchorage

Municipal Charter. The Alaska Supreme Court concluded that the Anchorage Assembly could have reasonably determined that the entire police service area was an "area affected" within the meaning of the Anchorage Charter and therefore entitled to vote. (HALO App. at 23a-31a, 34a) Given this now unassailable state law finding, HALO does not have an equal protection/gerrymandering claim because every voter within the proper voting unit was given an equally powerful vote.

The fact that prior extensions of the Anchorage police service area were approved by a separate vote of the area to be added to the service area does not convert this case into one of federal constitutional law. It was clear in this case that a rational, fair, and equitable service area boundary should include the "Hillside" area of Anchorage. (See HALO App. at 27a-30a) Hillside residents, however, had voted on three occasions not to join the service area. (Id. at 7a) Hillside residents instead preferred to pay nothing to support the police and still enjoy most of the benefits of police service. A departure from prior practice was required, if this injustice was to be remedied. The Anchorage Assembly therefore exercised its authority to define proposed service area boundaries under the Municipal Charter. Its authority to do so was not

limited by the fact it had not had to take such action in the past.

Furthermore, as the Alaska Supreme Court noted, regardless of the practice followed by the Municipal Assembly in prior service area expansions, the Alaska Supreme Court is the final arbiter of the meaning of terms in the Anchorage Municipal Charter. (HALO App. at 19a) At this stage in the case, the Municipal Assembly, the Alaska Superior Court, and the Alaska Supreme Court have all uniformly determined that entire police service area was an "area affected" within the meaning of the Anchorage Municipal Charter. The Alaska Supreme Court's decision is determinative of the merits of HALO's petition.

Although irrelevant to this petition, HALO repeatedly contends that Hillside residents are being "punished" because they are "unruly," "politically incorrect," and vote the "wrong" way. These statements are misleading descriptions for the actual problem facing the Municipality. The actual problem was that one of the largest and wealthiest residential areas of the Municipality was able to enjoy most of the benefits of police service without paying anything to support that service. This had the effect of unfairly

burdening the rest of the Municipality with costs that should have been shared with Hillside residents. The Alaska Supreme Court summarized the situation as follows:

> The Hillside is a residential area that has grown from a population of approximately 2,500 in 1975 to a population of 25,000 now. It is relatively affluent; according to Mayor Rick Mystrom, its voting population is approximately ten percent of Anchorage's, but its residential property value comprises seventeen percent of the Anchorage total.
>
> Hillside residents do not pay for APD police service. Instead they rely on [free] Alaska state troopers for protection. However, Hillside residents benefit from APD services. APD provides emergency services and investigates major crimes in the Hillside. APD polices roads that border the Hillside and public institutions, such as Service High School, within the Hillside. About thirty APD officers

> reside in the Hillside and drive their patrol cars home, providing a limited patrol service for the Hillside. Many city-wide services provided by APD benefit Hillside residents. Those services include the 911 system, specialized units such as the bomb squad, and what the Municipality calls "safe city" functions. Safe city functions are programs designed to benefit all Anchorage residents and include crime prevention education, municipal prosecution, jail cells, patrols for safer recreation and shopping areas, and measures to reduce drunk driving.

(HALO App. at 5a-6a) Hillside residents were not punished because they were "politically incorrect." Hillside residents were simply required by a vote of all the residents within the "affected area" to pay their fair share of taxes to support police services which directly benefit Hillside residents. This vote complied with the definition of "area affected" in the Municipal Charter.

HALO also suggests that the "Hillside" area of Anchorage has some type of distinct and independent

geographical existence when it is simply an area which, by historical anomaly, remained after previous expansions of the police service area.[2] The Hillside is in fact part of the Municipality. There are no pre-determined service areas in the Municipality. The Hillside is not a political subdivision of the Municipality. The Alaska Supreme Court has confirmed that the task of determining what areas are affected by service area decisions is committed to the Anchorage Assembly. Under the Charter, the Assembly is responsible for establishing fair and equitable service area boundaries. There is no unique geographical boundary to the Hillside separate and apart from the service area boundary which is subject to modification under the procedures used by the Assembly, approved by the voters, and confirmed by the Alaska Supreme Court.

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[2] HALO variously refers to the Hillside as "a distinct, identifiable geographic area," a "distinct geographic area," a "historically identified cohesive geographic area." (Petition at i, 3, 6)

B. Any Federal Question That is Presented Does Not Warrant Supreme Court Review

Even assuming HALO raises a federal constitutional issue, the issue is not an important issue of federal law and the precedent set by this case will not affect anyone other than the residents of Anchorage, Alaska.

The fact that this petition does not present an important issue of federal law is evident from the cursory treatment the federal equal protection/gerrymander claim received below. HALO's only reference to the United States Constitution or any federal case law in its 50-page brief to the Alaska Supreme Court is found in one paragraph. (HALO App. at 78a-79a) In that one paragraph, HALO cited to Justice Fortas' definition of "gerrymandering" in his concurring opinion in Kirkpatrick v. Preisler, 394 U.S. 526, 538 (1969), and to Justice Stevens concurring opinion in Karcher v. Daggett, 462 U.S. 725, 749 (1983), wherein Justice Stevens stated that the equal protection clause prohibits racial, ethnic, religious, economic or political gerrymanders. It appears that these concurring opinions were simply cited for their reasoning in support of HALO's state equal protection claim. (See

HALO App. at 78a-83a) HALO did not even list the United States Constitution in its table of authorities in its Alaska Supreme Court brief. (MOA App. at 5a-6a) The issue of equal protection (under either the state or federal constitutions) was not even mentioned in HALO's reply brief. The parties realized that the decisive issue in this case was whether the Assembly had acted in accordance with the Municipal Charter. Thus the only justice who dissented from the Alaska Supreme Court's decision did not mention the subject of gerrymandering or equal protection anywhere in his extensive opinion. (See HALO App. at 35a-73a)

In addition, the issue raised by HALO does not present an important federal question given the unique language of the Anchorage Municipal Charter. The issue in this case is not likely to be confronted by any other court. Indeed, HALO states "this appears to be a case of first impression." (Petition at 16) This case is unique to Alaska because of the unique language of the Anchorage Municipal Charter. Further appellate review of this case would only affect residents of the Municipality of Anchorage.

Finally, there is also no conflict, direct or indirect, with any decision of any federal court. HALO primarily relies on three cases: Reynolds v.

Sims, 377 U.S. 533 (1964); Karcher v. Daggett, 462 U.S. 725 (1983), and a plurality opinion in Davis v. Bandemer, 478 U.S. 109 (1986). In Reynold v. Sims, the court held that a population variance of up to 41 to 1 in election districts for the Alabama State Legislature violated equal protection guarantees. In Karcher v. Daggett, the court held that population deviations among congressional districts in New Jersey, when not the result of a good-faith effort to achieve population equality, violated Article I, § 2, of the United States Constitution. In Davis v. Bandemer, the court held that a claim that a redistricting plan for the Indiana State Legislature was designed to disadvantage the Democratic Party stated a justiciable claim but held that there was insufficient evidence of discriminatory vote dilution.

In all of these cases, the ultimate voting unit was a given: it was the state. All of these cases were instead concerned with how to ensure that voters throughout the state had a fair chance to influence the political process with an equally powerful vote. The constitutional issues in all three cases resulted from the fact that individuals do not vote directly in Congress or a state legislature, but instead elect representatives. The question presented in these cases was how to draw membership districts within the state so as to maintain

the rights of voters throughout the acknowledged voting unit (the state) to a fair and equally powerful vote.

In this case, the voting unit was not a given, but was instead the only issue in dispute. Under the Anchorage Municipal Charter, voters within the "area affected" are entitled to vote on service area ordinances. HALO contended that the only "area affected" is the geographic area to be added or removed from a service area. (HALO App. at 12a-13a) The Alaska Supreme Court disagreed, concluding that the drafters of the Municipal Charter had rejected this definition in favor of the broader concept of "area affected." (Id. at 16a) The court further held that an ordinance passed 18 years ago reasonably defined the term "area affected" to mean the area "determined by the Assembly to be subject to significant change in the cost, quality, quantity or other factor affecting the delivery of [the] service." (Id. at 20a-22a) In this case, the existing police service area was within the "area affected" because it was required to subsidize an affluent residential area of the city in an amount in excess of $2 million a year and was required to divert police resources to that area even though Hillside residents had paid nothing to support the service. (Id. at 29a) In short, the Alaska Supreme Court held that

Hillside residents did not have a right under the Municipal Charter to veto efforts to terminate their free police service subsidy. This decision in no way conflicts with any federal precedent.[3]

HALO's final argument is that voters within the existing police service area were effectively "bribed" into voting in favor of the disputed ordinance because passage of the ordinance would terminate the Hillside police subsidy and save the residents of the existing police service area approximately $40 per year per household. (Petition at 26) **First**, this argument was not raised below. In fact, HALO argued below that this $40 amount was *de minimus* and therefore could not have "affected" the residents of the existing police service area. (MOA App. at 8a) This argument should be considered waived. **Second**, this argument does not make any sense. Voters frequently vote on issues that directly affect their pocketbook. Individuals vote on bonds, tax caps, sales taxes and similar

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[3] The additional cases cited by HALO prohibiting ballot stuffing, discarding ballots, and refusing to count ballots are equally inapposite in this case. No such conduct occurred in this case and the voting unit was not at issue in any of those cases.

measures. Many ballot propositions disproportionately benefit or burden different segments of society. For example, school bonds most directly benefit families with school age children while providing little benefit to retired couples. Likewise, a bed tax directly burdens the visitor industry while providing general funds for local government services. Finally, even Hillside residents would be disqualified from voting under HALO's reasoning. Hillside residents had been repeatedly "bribed" to vote against joining the service area because they would have had to pay several hundred dollars per household per year for their previously free police service benefits. **Third**, the two cases cited by HALO in support of this theory do not arguably apply in this situation. Both cases involve *quid pro qo* inducements to specific voters in order to obtain each individual's express agreement prior to the election to vote a certain way. Here the alleged "inducement" is the elimination of a unfair subsidy of general application which is not tied to a reciprocal promise from any voter.[4]

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[4] In Town of Fond du Lac v. City of Fond du Lac, 126 N.W.2d 201 (Wis. 1964), the city was attempting to annex land which included property owned by the city. The area proposed for annexation contained only a handful of voters. The city offered some of its

CONCLUSION

No relief can be provided to HALO without reinterpreting the Anchorage Municipal Charter. This Court should not reinterpret a municipal charter. If for some reason the Court believes that jurisdiction does exist, it should nevertheless deny HALO's petition. This case does not present an important question of federal law.

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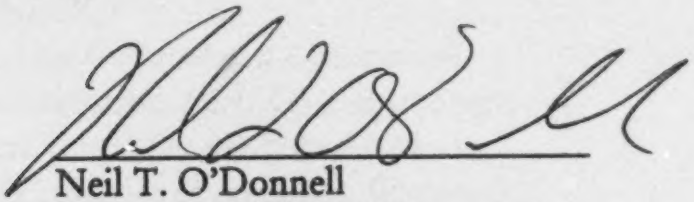
tenants one year's free rent if they agreed to vote in favor of annexation; others were told they would be evicted if they voted against annexation. In Hussey v. City of Portland, 64 F.3d 1260 (9th Cir. 1995), cert. denied, 116 S. Ct. 911 (1996), the city offered individual land owners a sewer connection subsidy, which could amount to "thousands of dollars," if they signed an irrevocable consent to annexation. The court noted that it would have been permissible to offer the subsidy to all homeowners as an inducement to vote for annexation as long as the subsidy was not directly linked to a person's vote. Id. at 1266.

Respectfully submitted this 27th day of March, 1997.



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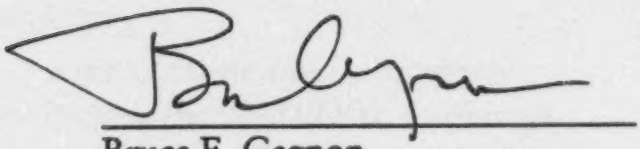

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Area G Home and Landowners Organization, Inc. (HALO) v. Anchorage, Supreme Court for the State of Alaska, No. S-7731, Brief of Appellee, (Excerpt), 8/19/96

IN THE SUPREME COURT OF THE STATE OF ALASKA

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and JAMES M. CRAWFORD,	)
Appellants,	)
vs.	)
ANCHORAGE, A Municipal Corporation,	)
Appellee.	)

Superior Court Case No. 3AN-96-1661 CI
Supreme Court No. S-7731

APPEAL FROM THE SUPERIOR COURT FOR THE STATE OF ALASKA THIRD JUDICIAL DISTRICT AT ANCHORAGE
CASE NO. 96-01661 CI
THE HONORABLE KAREN L. HUNT

BRIEF OF APPELLEE (EXCERPT)

* * *

IV ARGUMENT

* * *

F. Hillside Residents Were Not Denied Equal Protection

HALO's equal protection/gerrymandering claim is dependent upon the assumption that the Hillside area has a right under the Charter to a separate Hillside vote because it is the only "area affected" by AO 96-30(S). If the Hillside is indeed the only "area affected," AO 96-30(S) violates the Charter and, in some unusual sense, may also violate equal protection guarantees. If residents throughout the new Anchorage Police Service Area are affected by AO 96-30(S), however, then every voter in

the affected area was given an equally powerful vote. HALO's equal protection/gerrymandering claim thus turns on the merits of HALO's prior claim and adds nothing to the analysis of this case.

APPENDIX B

Area G Home and Landowners Organization, Inc. (HALO) v. Anchorage, Supreme Court for the State of Alaska, No. S-7731, Brief of Appellants, (Excerpt), 8/6/96

IN THE SUPREME COURT OF THE STATE OF ALASKA

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and JAMES M. CRAWFORD,	)
Appellants,	)
vs.	)
ANCHORAGE, A Municipal Corporation,	)
Appellee.	)

Superior Court Case No. 3AN-96-1661 CI
Supreme Court No. S-7731

APPEAL FROM THE SUPERIOR COURT FOR
THE STATE OF ALASKA THIRD JUDICIAL
DISTRICT AT ANCHORAGE
CASE NO. 96-01661 CI
THE HONORABLE KAREN L. HUNT

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA THIRD JUDICIAL DISTRICT AT ANCHORAGE

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and JAMES M. CRAWFORD,

Plaintiffs,

vs.

ANCHORAGE, A Municipal Corporation,

Defendant.

Superior Court Case No. 3AN-96-1661 CI

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
(EXCERPT)

[3] The MOA argues that residents of the "new" police service area who were previously provided with police protection through APSA would see a "significant change downward in the cost of police services as they would be relieved of the burden of subsidizing the Hillside." The individual impact of that reduction was actually estimated by the City to be only approximately $40/year on a typical $180,000 home. *See* Def. Opp., Ex. 7 at 7. In today's economy, $40.00 will only buy two men's haircuts, a couple of tanks of gas, two concert tickets at the Sullivan Arena, or a single visit with a chiropractor.

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Supreme Court, U.S.
FILED
APR 15 1997
OFFICE OF THE CLERK

No. 96-1409

In The

Supreme Court of the United States

October Term, 1996

AREA G HOME AND LANDOWNERS ORGANIZATION, INC. (HALO), DANIEL E. STONE, WARREN OLSON, and and JAMES M. CRAWFORD;

Petitioners,

vs.

ANCHORAGE, A Municipal Corporation,

Respondent.

On Petition for a Writ of Certiorari to the Alaska Supreme Court

---

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

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CONSTITUTIONAL PROVISIONS,TREATIES, STATUTES, ORDINANCES AND REGULATIONS

U.S. Constitution, art. I, § 10

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ARGUMENT

Repondent the Municipality of Anchorage (the "Municipality" or "Respondent") claims in its Brief in Opposition that there are no jurisdictional grounds for reviewing the decision of the Alaska Supreme Court for which Petitioners HALO seek a writ of certiorari, Area G Home and Landowners Organization, Inc. (HALO) v. Anchorage, 927 P.2d 728 (Alaska 1996). Respondent the Municipality also claims that any federal question presented here does not warrant the review of this Court. Respondent is wrong on both counts.

This Court has jurisdiction to review a decision of the highest court of a state when that decision involves a question of federal law, as it does here. Furthermore, this case involves one of the most important and fundamental rights under the federal constitution--the right to vote. Accordingly, there are clearly jurisdictional grounds to grant Petitioners request for a writ of certiorari, and the importance of the federal right involved here warrants such review.

The Municipality argues that any claim by Hillside voters to a right to a separate vote must be predicated on the Anchorage Municipal Charter. See Respondent's Brief in Opposition ("Brief in Opp.") at 4-5. This is not the case, however. Under circumstances such as those here, the right to a separate vote is guaranteed, independently of the Municipal Charter, by the Equal Protection Clause of the U.S. Constitution. See Hussey v. City of Portland, 64 F.3d 1260, 1263 (9th Cir. 1995), cert. denied, -- U.S. --, 1160 S. Ct. 911 (1996); Hayward v. Clay, 573 F.2d 187, 190 (4th Cir. 1978). Once a group or geographic area has been given the right to vote separately on a matter, that right is protected by the Constitution and cannot be arbitrarily withdrawn. See id. In this instance, the right was not merely arbitrarily withdrawn, it was withdrawn for an illegitimate, unconstitutional purpose -- because the Municipality objected to the way in which Hillside voters had previously voted on this same issue--four times in fact.

Respondent also argues that Petitioners HALO do not have an equal protection or gerrymandering claim "because every voter within the proper voting unit was given an equally powerful vote." Brief in Opp. at 7. This same argument, however, is true of most gerrymanders. The issue is whether a "voting unit" can be selected with both the intention and the effective result of totally disenfranchising a dissident political, economic, or geographic minority after that group has been granted a right to a separate vote on precisely the same issue on

several prior occasions, and, further, after each of the other similarly situated, distinct areas in the Municipality which considered this issue had also been granted the right to a separate vote. Significantly, Respondent does not dispute this history: at no time in its history (other than the election which is the subject of HALO's present Petition) has the Municipality denied an area the right to a separate vote to determine whether the area would become part of the Anchorage Police Service Area ("PSA"). Once this right was extended, it is protected by the U.S. Constitution. See Hussey v. City of Portland, 64 F.3d at 1263 and Hayward v. Clay, 573 F.2d at 190.

Remarkably, the Municipality now denies what it admitted below in the Alaska Supreme Court: that Respondent submerged Hillside voters into a voting unit, in which they were outnumbered 10 to 1 by voters of the existing Anchorage PSA, who had a financial incentive to vote the "right" way,[1/] simply because Hillside voters had voted the "wrong" way four previous times. Brief in Opp. at 8-10. In its brief to the Alaska Supreme Court, the Municipality admitted that it did "not dispute the fact that it is taking the present step because the Hillside previously

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[1/]Coincidentally, as counsel is preparing this Reply, the lead story in the Anchorage Daily News for April 9, 1997 confirms this financial incentive; the headline reads: "Police bill ups taxes for Hillside[;] Other homeowners to pay less."

voted not to join in the Anchorage [PSA]." See Appendix ("App.") at 92a.

> The Municipality also argues that:
>
> There is no unique geographical boundary to the Hillside separate and apart from the service area boundary which is subject to modification under the procedures used by the Assembly, approved by the voters and confirmed by the Alaska Supreme Court.

Brief in Opp. at 10-11. The same can be said, however, for the unincorporated area surrounding the City of Portland, Oregon, to which a right to vote on annexation issues had been granted and then unconstitutionally withdrawn. See Hussey v. City of Portland, 64 F.3d at 1263. The distinct geographic configuration of the Hillside has been recognized by Respondent in four prior elections on this very same issue: in 1977, 1986, 1988, and 1993. In each instance, Hillside residents were granted the right to a separate vote. The area is also clearly delineated on municipal tax, election district, and service area maps. Further, the Hillside is just as distinct an area as was each of the 10 other areas which was given this right to a separate vote on this issue.

The Municipality's admitted intention was to negate any influence by a geographically identifiable group of voters, who had voted the "wrong" way on four

occasions. The method chosen to negate that influence was to submerge Hillside voters into a voting unit in which the "politically incorrect" Hillside voters were outnumbered, 10 to 1, by "politically correct" voters. The result was effective, total disenfranchisement. It would have made no difference whether 100 percent of the registered Hillside voters went to the polls and voted "No" or 100 percent simply stayed home.

The result of that election is effectively irreversible, unless this Court intervenes. Detachment of a significant segment of taxable property from the New Anchorage PSA, which is encumbered with bonded indebtedness, is very likely impossible due to constitutional restrictions on the impairment of contracts. See U.S. Constitution, Art. I, § 10. Detachment could impair the security of bondholders. See, e.g., Canal Nat'l Bank v. School Administration District, 203 A.2d 734 (Me. 1964) and other decisions cited in Petitioners' Petition for Writ of Certiorari at 25.

The Municipality's actions constitute an unconstitutional non-racial, non-partisan gerrymander under Davis v. Bandemer, 478 U.S. 109 (1986). There was a clear, undisputed, intention to "freeze out" a dissident political minority. The result was effective, total, disenfranchisement which will "consistently degrade a voter's or a group of voters' influence on the political process as a whole." 478 U.S. at 132.

This Court should not be misled by Respondent's argument that no "important issue of federal law is involved" and that "the precedent set by this case will not affect anyone other than the residents of Anchorage, Alaska."[2/] Many of this court's most important decisions concerning "one man/one vote" had their origin in obscure, local abuses of power, such as this. Board of Estimates v. Morris, 489 U.S. 688 (1989) concerned a city board of equalization. The result was that institutional representation was found to violate Equal Protection. Kramer v. Union Free School District, 395 U.S. 699 (1969) dealt with a local school district election. Evans v. Cornman, 398 U.S. 419 (1970) concerned eligibility to vote for a county board of supervisors. City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) dealt with a city bond issue, as did Cipriano v. City of Houma, 395 U.S. 701 (1969).

The City of Houma is a small town in southern Louisiana, with a population of about 30,000 people. It is

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[2/]This Court has previously scrutinized the way in which the State of Alaska distributed a portion of its oil wealth to the citizens of Alaska, surely an issue of little concern to anyone residing outside Alaska. Nevertheless, this Court granted certiorari and reversed the decision of the Alaska Supreme Court. Zobel v. Williams, 457 U.S. 55 (1982), reversing Williams v. Zobel, 619 P.2d 448 (Alaska 1980).

far smaller than Anchorage, Alaska, which contains about 250,000 people, nearly half of the state's population. Why would any non-resident, or this Court, be concerned about the outcome of local revenue bonds in Houma? Or, about a board of equalization in New York City, a local school district election in upstate New York, a local bond issue election in Phoenix, or whether some people were or were not allowed to vote for an obscure board of county supervisors in Maryland?

The reason is that the right to vote and to make one's vote count is the most fundamental of American rights. No local government, wherever located, has the right to withdraw a right to vote from voters to whom that right has been granted, gratuitously or otherwise, simply because they voted the "wrong way" on four occasions (or on only one, for that matter). Today, the excuse for withdrawing that right may be that the "politically incorrect" voters were using that right to perpetuate themselves as "free riders" on a police budget. Tomorrow it may be any excuse which a municipal legislative body and mayor can devise to further their own political agenda. No community in the United States is immune from such manipulations.

It should make no difference whether the device which is chosen to effectively "freeze out" a "targeted" group of voters is to refuse to allow them to register to

vote,[3] to allow them to register but refuse to allow them to cast ballots,[4] to refuse to count their votes once cast,[5] to stuff the ballot box,[6] or simply to draw the boundaries of a voting unit so that the "targeted group" is outnumbered 10 to 1 by hostile voters. Each method achieves the same, intended, result: total, effective disenfranchisement of the "targeted group." If one method is unconstitutional, aren't they all?

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

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[3] Carrington v. Rash, 380 U.S. 89, 94 (1965).

[4] Evans v. Cornman, 398 U.S. 419, 422-23 (1970).

[5] United States v. Mosely, 238 U.S. 383 (1915).

[6] Ex Parte Siebold, 100 U.S. 371 (1879); United States v. Saylor, 322 U.S. 385 (1944).

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